

107TH CONGRESS
2^D SESSION

H. R. 5710

AN ACT

To establish the Department of Homeland Security, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Homeland Security Act of 2002”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Construction; severability.
- Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

- Sec. 101. Executive department; mission.
- Sec. 102. Secretary; functions.
- Sec. 103. Other officers.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE
PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure
Protection; Access to Information

- Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
- Sec. 202. Access to information.

Subtitle B—Critical Infrastructure Information

- Sec. 211. Short title.
- Sec. 212. Definitions.
- Sec. 213. Designation of critical infrastructure protection program.
- Sec. 214. Protection of voluntarily shared critical infrastructure information.
- Sec. 215. No private right of action.

Subtitle C—Information Security

- Sec. 221. Procedures for sharing information.
- Sec. 222. Privacy Officer.
- Sec. 223. Enhancement of non-Federal cybersecurity.
- Sec. 224. Net guard.
- Sec. 225. Cyber Security Enhancement Act of 2002.

Subtitle D—Office of Science and Technology

- Sec. 231. Establishment of office; Director.
- Sec. 232. Mission of office; duties.
- Sec. 233. Definition of law enforcement technology.
- Sec. 234. Abolishment of Office of Science and Technology of National Institute of Justice; transfer of functions.
- Sec. 235. National Law Enforcement and Corrections Technology Centers.
- Sec. 236. Coordination with other entities within Department of Justice.
- Sec. 237. Amendments relating to National Institute of Justice.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF
HOMELAND SECURITY

- Sec. 301. Under Secretary for Science and Technology.
- Sec. 302. Responsibilities and authorities of the Under Secretary for Science and Technology.
- Sec. 303. Functions transferred.
- Sec. 304. Conduct of certain public health-related activities.
- Sec. 305. Federally funded research and development centers.
- Sec. 306. Miscellaneous provisions.
- Sec. 307. Homeland Security Advanced Research Projects Agency.
- Sec. 308. Conduct of research, development, demonstration, testing and evaluation.
- Sec. 309. Utilization of Department of Energy national laboratories and sites in support of homeland security activities.
- Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.
- Sec. 311. Homeland Security Science and Technology Advisory Committee.
- Sec. 312. Homeland Security Institute.
- Sec. 313. Technology clearinghouse to encourage and support innovative solutions to enhance homeland security.

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION
SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

- Sec. 401. Under Secretary for Border and Transportation Security.
- Sec. 402. Responsibilities.
- Sec. 403. Functions transferred.

Subtitle B—United States Customs Service

- Sec. 411. Establishment; Commissioner of Customs.
- Sec. 412. Retention of customs revenue functions by Secretary of the Treasury.
- Sec. 413. Preservation of customs funds.
- Sec. 414. Separate budget request for customs.
- Sec. 415. Definition.
- Sec. 416. GAO report to Congress.
- Sec. 417. Allocation of resources by the Secretary.
- Sec. 418. Reports to Congress.
- Sec. 419. Customs user fees.

Subtitle C—Miscellaneous Provisions

- Sec. 421. Transfer of certain agricultural inspection functions of the Department of Agriculture.
- Sec. 422. Functions of Administrator of General Services.
- Sec. 423. Functions of Transportation Security Administration.
- Sec. 424. Preservation of Transportation Security Administration as a distinct entity.
- Sec. 425. Explosive detection systems.
- Sec. 426. Transportation security.
- Sec. 427. Coordination of information and information technology.
- Sec. 428. Visa issuance.
- Sec. 429. Information on visa denials required to be entered into electronic data system.

Sec. 430. Office for Domestic Preparedness.

Subtitle D—Immigration Enforcement Functions

- Sec. 441. Transfer of functions to Under Secretary for Border and Transportation Security.
- Sec. 442. Establishment of Bureau of Border Security.
- Sec. 443. Professional responsibility and quality review.
- Sec. 444. Employee discipline.
- Sec. 445. Report on improving enforcement functions.
- Sec. 446. Sense of Congress regarding construction of fencing near San Diego, California.

Subtitle E—Citizenship and Immigration Services

- Sec. 451. Establishment of Bureau of Citizenship and Immigration Services.
- Sec. 452. Citizenship and Immigration Services Ombudsman.
- Sec. 453. Professional responsibility and quality review.
- Sec. 454. Employee discipline.
- Sec. 455. Effective date.
- Sec. 456. Transition.
- Sec. 457. Funding for citizenship and immigration services.
- Sec. 458. Backlog elimination.
- Sec. 459. Report on improving immigration services.
- Sec. 460. Report on responding to fluctuating needs.
- Sec. 461. Application of Internet-based technologies.
- Sec. 462. Children's affairs.

Subtitle F—General Immigration Provisions

- Sec. 471. Abolishment of INS.
- Sec. 472. Voluntary separation incentive payments.
- Sec. 473. Authority to conduct a demonstration project relating to disciplinary action.
- Sec. 474. Sense of Congress.
- Sec. 475. Director of Shared Services.
- Sec. 476. Separation of funding.
- Sec. 477. Reports and implementation plans.
- Sec. 478. Immigration functions.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

- Sec. 501. Under Secretary for Emergency Preparedness and Response.
- Sec. 502. Responsibilities.
- Sec. 503. Functions transferred.
- Sec. 504. Nuclear incident response.
- Sec. 505. Conduct of certain public health-related activities.
- Sec. 506. Definition.
- Sec. 507. Role of Federal Emergency Management Agency.
- Sec. 508. Use of national private sector networks in emergency response.
- Sec. 509. Use of commercially available technology, goods, and services.

TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS

Sec. 601. Treatment of charitable trusts for members of the Armed Forces of the United States and other governmental organizations.

TITLE VII—MANAGEMENT

Sec. 701. Under Secretary for Management.
 Sec. 702. Chief Financial Officer.
 Sec. 703. Chief Information Officer.
 Sec. 704. Chief Human Capital Officer.
 Sec. 705. Establishment of Officer for Civil Rights and Civil Liberties.
 Sec. 706. Consolidation and co-location of offices.

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 801. Office for State and Local Government Coordination.

Subtitle B—Inspector General

Sec. 811. Authority of the Secretary.
 Sec. 812. Law enforcement powers of Inspector General agents.

Subtitle C—United States Secret Service

Sec. 821. Functions transferred.

Subtitle D—Acquisitions

Sec. 831. Research and development projects.
 Sec. 832. Personal services.
 Sec. 833. Special streamlined acquisition authority.
 Sec. 834. Unsolicited proposals.
 Sec. 835. Prohibition on contracts with corporate expatriates.

Subtitle E—Human Resources Management

Sec. 841. Establishment of Human Resources Management System.
 Sec. 842. Labor-management relations.

Subtitle F—Federal Emergency Procurement Flexibility

Sec. 851. Definition.
 Sec. 852. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
 Sec. 853. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
 Sec. 854. Increased micro-purchase threshold for certain procurements.
 Sec. 855. Application of certain commercial items authorities to certain procurements.
 Sec. 856. Use of streamlined procedures.
 Sec. 857. Review and report by Comptroller General.
 Sec. 858. Identification of new entrants into the Federal marketplace.

Subtitle G—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

- Sec. 861. Short title.
- Sec. 862. Administration.
- Sec. 863. Litigation management.
- Sec. 864. Risk management.
- Sec. 865. Definitions.

Subtitle H—Miscellaneous Provisions

- Sec. 871. Advisory committees.
- Sec. 872. Reorganization.
- Sec. 873. Use of appropriated funds.
- Sec. 874. Future Year Homeland Security Program.
- Sec. 875. Miscellaneous authorities.
- Sec. 876. Military activities.
- Sec. 877. Regulatory authority and preemption.
- Sec. 878. Counternarcotics officer.
- Sec. 879. Office of International Affairs.
- Sec. 880. Prohibition of the Terrorism Information and Prevention System.
- Sec. 881. Review of pay and benefit plans.
- Sec. 882. Office for National Capital Region Coordination.
- Sec. 883. Requirement to comply with laws protecting equal employment opportunity and providing whistleblower protections.
- Sec. 884. Federal Law Enforcement Training Center.
- Sec. 885. Joint Interagency Task Force.
- Sec. 886. Sense of Congress reaffirming the continued importance and applicability of the Posse Comitatus Act.
- Sec. 887. Coordination with the Department of Health and Human Services under the Public Health Service Act.
- Sec. 888. Preserving Coast Guard mission performance.
- Sec. 889. Homeland security funding analysis in President's budget.
- Sec. 890. Air Transportation Safety and System Stabilization Act.

Subtitle I—Information Sharing

- Sec. 891. Short title; findings; and sense of Congress.
- Sec. 892. Facilitating homeland security information sharing procedures.
- Sec. 893. Report.
- Sec. 894. Authorization of appropriations.
- Sec. 895. Authority to share grand jury information.
- Sec. 896. Authority to share electronic, wire, and oral interception information.
- Sec. 897. Foreign intelligence information.
- Sec. 898. Information acquired from an electronic surveillance.
- Sec. 899. Information acquired from a physical search.

TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

- Sec. 901. National Homeland Security Council.
- Sec. 902. Function.
- Sec. 903. Membership.
- Sec. 904. Other functions and activities.
- Sec. 905. Staff composition.
- Sec. 906. Relation to the National Security Council.

TITLE X—INFORMATION SECURITY

- Sec. 1001. Information security.
- Sec. 1002. Management of information technology.

- Sec. 1003. National Institute of Standards and Technology.
- Sec. 1004. Information Security and Privacy Advisory Board.
- Sec. 1005. Technical and conforming amendments.
- Sec. 1006. Construction.

TITLE XI—DEPARTMENT OF JUSTICE DIVISIONS

Subtitle A—Executive Office for Immigration Review

- Sec. 1101. Legal status of EOIR.
- Sec. 1102. Authorities of the Attorney General.
- Sec. 1103. Statutory construction.

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

- Sec. 1111. Bureau of Alcohol, Tobacco, Firearms, and Explosives.
- Sec. 1112. Technical and conforming amendments.
- Sec. 1113. Powers of agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.
- Sec. 1114. Explosives training and research facility.
- Sec. 1115. Personnel management demonstration project.

Subtitle C—Explosives

- Sec. 1121. Short title.
- Sec. 1122. Permits for purchasers of explosives.
- Sec. 1123. Persons prohibited from receiving or possessing explosive materials.
- Sec. 1124. Requirement to provide samples of explosive materials and ammonium nitrate.
- Sec. 1125. Destruction of property of institutions receiving Federal financial assistance.
- Sec. 1126. Relief from disabilities.
- Sec. 1127. Theft reporting requirement.
- Sec. 1128. Authorization of appropriations.

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

- Sec. 1201. Air carrier liability for third party claims arising out of acts of terrorism.
- Sec. 1202. Extension of insurance policies.
- Sec. 1203. Correction of reference.
- Sec. 1204. Report.

TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

- Sec. 1301. Short title.
- Sec. 1302. Agency Chief Human Capital Officers.
- Sec. 1303. Chief Human Capital Officers Council.
- Sec. 1304. Strategic human capital management.
- Sec. 1305. Effective date.

Subtitle B—Reforms Relating to Federal Human Capital Management

- Sec. 1311. Inclusion of agency human capital strategic planning in performance plans and programs performance reports.

- Sec. 1312. Reform of the competitive service hiring process.
- Sec. 1313. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
- Sec. 1314. Student volunteer transit subsidy.

Subtitle C—Reforms Relating to the Senior Executive Service

- Sec. 1321. Repeal of recertification requirements of senior executives.
- Sec. 1322. Adjustment of limitation on total annual compensation.

Subtitle D—Academic Training

- Sec. 1331. Academic training.
- Sec. 1332. Modifications to National Security Education Program.

TITLE XIV—ARMING PILOTS AGAINST TERRORISM

- Sec. 1401. Short title.
- Sec. 1402. Federal Flight Deck Officer Program.
- Sec. 1403. Crew training.
- Sec. 1404. Commercial airline security study.
- Sec. 1405. Authority to arm flight deck crew with less-than-lethal weapons.
- Sec. 1406. Technical amendments.

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

- Sec. 1501. Definitions.
- Sec. 1502. Reorganization plan.
- Sec. 1503. Review of congressional committee structures.

Subtitle B—Transitional Provisions

- Sec. 1511. Transitional authorities.
- Sec. 1512. Savings provisions.
- Sec. 1513. Terminations.
- Sec. 1514. National identification system not authorized.
- Sec. 1515. Continuity of Inspector General oversight.
- Sec. 1516. Incidental transfers.
- Sec. 1517. Reference.

TITLE XVI—CORRECTIONS TO EXISTING LAW RELATING TO
AIRLINE TRANSPORTATION SECURITY

- Sec. 1601. Retention of security sensitive information authority at Department of Transportation.
- Sec. 1602. Increase in civil penalties.
- Sec. 1603. Allowing United States citizens and United States nationals as screeners.

TITLE XVII—CONFORMING AND TECHNICAL AMENDMENTS

- Sec. 1701. Inspector General Act of 1978.
- Sec. 1702. Executive Schedule.
- Sec. 1703. United States Secret Service.
- Sec. 1704. Coast Guard.
- Sec. 1705. Strategic national stockpile and smallpox vaccine development.

- Sec. 1706. Transfer of certain security and law enforcement functions and authorities.
- Sec. 1707. Transportation security regulations.
- Sec. 1708. National Bio-Weapons Defense Analysis Center.
- Sec. 1709. Collaboration with the Secretary of Homeland Security.
- Sec. 1710. Railroad safety to include railroad security.
- Sec. 1711. Hazmat safety to include hazmat security.
- Sec. 1712. Office of Science and Technology Policy.
- Sec. 1713. National Oceanographic Partnership Program.
- Sec. 1714. Clarification of definition of manufacturer.
- Sec. 1715. Clarification of definition of vaccine-related injury or death.
- Sec. 1716. Clarification of definition of vaccine.
- Sec. 1717. Effective date.

1 **SEC. 2. DEFINITIONS.**

2 In this Act, the following definitions apply:

3 (1) Each of the terms “American homeland”
4 and “homeland” means the United States.

5 (2) The term “appropriate congressional com-
6 mittee” means any committee of the House of Rep-
7 resentatives or the Senate having legislative or over-
8 sight jurisdiction under the Rules of the House of
9 Representatives or the Senate, respectively, over the
10 matter concerned.

11 (3) The term “assets” includes contracts, facili-
12 ties, property, records, unobligated or unexpended
13 balances of appropriations, and other funds or re-
14 sources (other than personnel).

15 (4) The term “critical infrastructure” has the
16 meaning given that term in section 1016(e) of Pub-
17 lic Law 107–56 (42 U.S.C. 5195c(e)).

18 (5) The term “Department” means the Depart-
19 ment of Homeland Security.

1 (6) The term “emergency response providers”
2 includes Federal, State, and local emergency public
3 safety, law enforcement, emergency response, emer-
4 gency medical (including hospital emergency facili-
5 ties), and related personnel, agencies, and authori-
6 ties.

7 (7) The term “executive agency” means an ex-
8 ecutive agency and a military department, as de-
9 fined, respectively, in sections 105 and 102 of title
10 5, United States Code.

11 (8) The term “functions” includes authorities,
12 powers, rights, privileges, immunities, programs,
13 projects, activities, duties, and responsibilities.

14 (9) The term “key resources” means publicly or
15 privately controlled resources essential to the mini-
16 mal operations of the economy and government.

17 (10) The term “local government” means—

18 (A) a county, municipality, city, town,
19 township, local public authority, school district,
20 special district, intrastate district, council of
21 governments (regardless of whether the council
22 of governments is incorporated as a nonprofit
23 corporation under State law), regional or inter-
24 state government entity, or agency or instru-
25 mentality of a local government;

1 (B) an Indian Tribe or authorized tribal
2 organization, or in Alaska a Native Village or
3 Alaska Regional Native Corporation; and

4 (C) a rural community, unincorporated
5 town or village, or other public entity.

6 (11) The term “major disaster” has the mean-
7 ing given in section 102(2) of the Robert T. Stafford
8 Disaster Relief and Emergency Assistance Act (42
9 U.S.C. 5122).

10 (12) The term “personnel” means officers and
11 employees.

12 (13) The term “Secretary” means the Secretary
13 of Homeland Security.

14 (14) The term “State” means any State of the
15 United States, the District of Columbia, the Com-
16 monwealth of Puerto Rico, the Virgin Islands,
17 Guam, American Samoa, the Commonwealth of the
18 Northern Mariana Islands, and any possession of the
19 United States.

20 (15) The term “terrorism” means any activity
21 that—

22 (A) involves an act that—

23 (i) is dangerous to human life or po-
24 tentially destructive of critical infrastruc-
25 ture or key resources; and

1 (ii) is a violation of the criminal laws
2 of the United States or of any State or
3 other subdivision of the United States; and

4 (B) appears to be intended—

5 (i) to intimidate or coerce a civilian
6 population;

7 (ii) to influence the policy of a govern-
8 ment by intimidation or coercion; or

9 (iii) to affect the conduct of a govern-
10 ment by mass destruction, assassination,
11 or kidnapping.

12 (16)(A) The term “United States”, when used
13 in a geographic sense, means any State of the
14 United States, the District of Columbia, the Com-
15 monwealth of Puerto Rico, the Virgin Islands,
16 Guam, American Samoa, the Commonwealth of the
17 Northern Mariana Islands, any possession of the
18 United States, and any waters within the jurisdic-
19 tion of the United States.

20 (B) Nothing in this paragraph or any other
21 provision of this Act shall be construed to modify
22 the definition of “United States” for the purposes of
23 the Immigration and Nationality Act or any other
24 immigration or nationality law.

1 **SEC. 3. CONSTRUCTION; SEVERABILITY.**

2 Any provision of this Act held to be invalid or unen-
3 forceable by its terms, or as applied to any person or cir-
4 cumstance, shall be construed so as to give it the max-
5 imum effect permitted by law, unless such holding shall
6 be one of utter invalidity or unenforceability, in which
7 event such provision shall be deemed severable from this
8 Act and shall not affect the remainder thereof, or the ap-
9 plication of such provision to other persons not similarly
10 situated or to other, dissimilar circumstances.

11 **SEC. 4. EFFECTIVE DATE.**

12 This Act shall take effect 60 days after the date of
13 enactment.

14 **TITLE I—DEPARTMENT OF**
15 **HOMELAND SECURITY**

16 **SEC. 101. EXECUTIVE DEPARTMENT; MISSION.**

17 (a) ESTABLISHMENT.—There is established a De-
18 partment of Homeland Security, as an executive depart-
19 ment of the United States within the meaning of title 5,
20 United States Code.

21 (b) MISSION.—

22 (1) IN GENERAL.—The primary mission of the
23 Department is to—

24 (A) prevent terrorist attacks within the
25 United States;

1 (B) reduce the vulnerability of the United
2 States to terrorism;

3 (C) minimize the damage, and assist in the
4 recovery, from terrorist attacks that do occur
5 within the United States;

6 (D) carry out all functions of entities
7 transferred to the Department, including by
8 acting as a focal point regarding natural and
9 manmade crises and emergency planning;

10 (E) ensure that the functions of the agen-
11 cies and subdivisions within the Department
12 that are not related directly to securing the
13 homeland are not diminished or neglected ex-
14 cept by a specific explicit Act of Congress;

15 (F) ensure that the overall economic secu-
16 rity of the United States is not diminished by
17 efforts, activities, and programs aimed at secur-
18 ing the homeland; and

19 (G) monitor connections between illegal
20 drug trafficking and terrorism, coordinate ef-
21 forts to sever such connections, and otherwise
22 contribute to efforts to interdict illegal drug
23 trafficking.

24 (2) RESPONSIBILITY FOR INVESTIGATING AND
25 PROSECUTING TERRORISM.—Except as specifically

1 provided by law with respect to entities transferred
2 to the Department under this Act, primary responsi-
3 bility for investigating and prosecuting acts of ter-
4 rorism shall be vested not in the Department, but
5 rather in Federal, State, and local law enforcement
6 agencies with jurisdiction over the acts in question.

7 **SEC. 102. SECRETARY; FUNCTIONS.**

8 (a) SECRETARY.—

9 (1) IN GENERAL.—There is a Secretary of
10 Homeland Security, appointed by the President, by
11 and with the advice and consent of the Senate.

12 (2) HEAD OF DEPARTMENT.—The Secretary is
13 the head of the Department and shall have direction,
14 authority, and control over it.

15 (3) FUNCTIONS VESTED IN SECRETARY.—All
16 functions of all officers, employees, and organiza-
17 tional units of the Department are vested in the Sec-
18 retary.

19 (b) FUNCTIONS.—The Secretary—

20 (1) except as otherwise provided by this Act,
21 may delegate any of the Secretary's functions to any
22 officer, employee, or organizational unit of the De-
23 partment;

24 (2) shall have the authority to make contracts,
25 grants, and cooperative agreements, and to enter

1 into agreements with other executive agencies, as
2 may be necessary and proper to carry out the Sec-
3 retary's responsibilities under this Act or otherwise
4 provided by law; and

5 (3) shall take reasonable steps to ensure that
6 information systems and databases of the Depart-
7 ment are compatible with each other and with ap-
8 propriate databases of other Departments.

9 (c) COORDINATION WITH NON-FEDERAL ENTI-
10 TIES.—With respect to homeland security, the Secretary
11 shall coordinate through the Office of State and Local Co-
12 ordination (established under section 801) (including the
13 provision of training and equipment) with State and local
14 government personnel, agencies, and authorities, with the
15 private sector, and with other entities, including by—

16 (1) coordinating with State and local govern-
17 ment personnel, agencies, and authorities, and with
18 the private sector, to ensure adequate planning,
19 equipment, training, and exercise activities;

20 (2) coordinating and, as appropriate, consoli-
21 dating, the Federal Government's communications
22 and systems of communications relating to homeland
23 security with State and local government personnel,
24 agencies, and authorities, the private sector, other
25 entities, and the public; and

1 (3) distributing or, as appropriate, coordinating
2 the distribution of, warnings and information to
3 State and local government personnel, agencies, and
4 authorities and to the public.

5 (d) MEETINGS OF NATIONAL SECURITY COUNCIL.—
6 The Secretary may, subject to the direction of the Presi-
7 dent, attend and participate in meetings of the National
8 Security Council.

9 (e) ISSUANCE OF REGULATIONS.—The issuance of
10 regulations by the Secretary shall be governed by the pro-
11 visions of chapter 5 of title 5, United States Code, except
12 as specifically provided in this Act, in laws granting regu-
13 latory authorities that are transferred by this Act, and in
14 laws enacted after the date of enactment of this Act.

15 (f) SPECIAL ASSISTANT TO THE SECRETARY.—The
16 Secretary shall appoint a Special Assistant to the Sec-
17 retary who shall be responsible for—

18 (1) creating and fostering strategic communica-
19 tions with the private sector to enhance the primary
20 mission of the Department to protect the American
21 homeland;

22 (2) advising the Secretary on the impact of the
23 Department's policies, regulations, processes, and
24 actions on the private sector;

1 (3) interfacing with other relevant Federal
2 agencies with homeland security missions to assess
3 the impact of these agencies' actions on the private
4 sector;

5 (4) creating and managing private sector advi-
6 sory councils composed of representatives of indus-
7 tries and associations designated by the Secretary
8 to—

9 (A) advise the Secretary on private sector
10 products, applications, and solutions as they re-
11 late to homeland security challenges; and

12 (B) advise the Secretary on homeland se-
13 curity policies, regulations, processes, and ac-
14 tions that affect the participating industries
15 and associations;

16 (5) working with Federal laboratories, Federally
17 funded research and development centers, other Fed-
18 erally funded organizations, academia, and the pri-
19 vate sector to develop innovative approaches to ad-
20 dress homeland security challenges to produce and
21 deploy the best available technologies for homeland
22 security missions;

23 (6) promoting existing public-private partner-
24 ships and developing new public-private partnerships

1 to provide for collaboration and mutual support to
2 address homeland security challenges; and

3 (7) assisting in the development and promotion
4 of private sector best practices to secure critical in-
5 frastructure.

6 (g) STANDARDS POLICY.—All standards activities of
7 the Department shall be conducted in accordance with sec-
8 tion 12(d) of the National Technology Transfer Advance-
9 ment Act of 1995 (15 U.S.C. 272 note) and Office of
10 Management and Budget Circular A–119.

11 **SEC. 103. OTHER OFFICERS.**

12 (a) DEPUTY SECRETARY; UNDER SECRETARIES.—
13 There are the following officers, appointed by the Presi-
14 dent, by and with the advice and consent of the Senate:

15 (1) A Deputy Secretary of Homeland Security,
16 who shall be the Secretary’s first assistant for pur-
17 poses of subchapter III of chapter 33 of title 5,
18 United States Code.

19 (2) An Under Secretary for Information Anal-
20 ysis and Infrastructure Protection.

21 (3) An Under Secretary for Science and Tech-
22 nology.

23 (4) An Under Secretary for Border and Trans-
24 portation Security.

1 (5) An Under Secretary for Emergency Pre-
2 paredness and Response.

3 (6) A Director of the Bureau of Citizenship and
4 Immigration Services.

5 (7) An Under Secretary for Management.

6 (8) Not more than 12 Assistant Secretaries.

7 (9) A General Counsel, who shall be the chief
8 legal officer of the department.

9 (b) INSPECTOR GENERAL.—There is an Inspector
10 General, who shall be appointed as provided in section
11 3(a) of the Inspector General Act of 1978.

12 (c) COMMANDANT OF THE COAST GUARD.—To assist
13 the Secretary in the performance of the Secretary's func-
14 tions, there is a Commandant of the Coast Guard, who
15 shall be appointed as provided in section 44 of title 14,
16 United States Code, and who shall report directly to the
17 Secretary. In addition to such duties as may be provided
18 in this Act and as assigned to the Commandant by the
19 Secretary, the duties of the Commandant shall include
20 those required by section 2 of title 14, United States Code.

21 (d) OTHER OFFICERS.—To assist the Secretary in
22 the performance of the Secretary's functions, there are the
23 following officers, appointed by the President:

24 (1) A Director of the Secret Service.

25 (2) A Chief Information Officer.

1 (3) A Chief Human Capital Officer.

2 (4) A Chief Financial Officer.

3 (5) An Officer for Civil Rights and Civil Lib-
4 erties.

5 (e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Sub-
6 ject to the provisions of this Act, every officer of the De-
7 partment shall perform the functions specified by law for
8 the official's office or prescribed by the Secretary.

9 **TITLE II—INFORMATION ANAL-**
10 **YSIS AND INFRASTRUCTURE**
11 **PROTECTION**

12 **Subtitle A—Directorate for Infor-**
13 **mation Analysis and Infrastruc-**
14 **ture Protection; Access to Infor-**
15 **mation**

16 **SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND**
17 **INFRASTRUCTURE PROTECTION.**

18 (a) UNDER SECRETARY OF HOMELAND SECURITY
19 FOR INFORMATION ANALYSIS AND INFRASTRUCTURE
20 PROTECTION.—

21 (1) IN GENERAL.—There shall be in the De-
22 partment a Directorate for Information Analysis and
23 Infrastructure Protection headed by an Under Sec-
24 retary for Information Analysis and Infrastructure

1 Protection, who shall be appointed by the President,
2 by and with the advice and consent of the Senate.

3 (2) RESPONSIBILITIES.—The Under Secretary
4 shall assist the Secretary in discharging the respon-
5 sibilities assigned by the Secretary.

6 (b) ASSISTANT SECRETARY FOR INFORMATION
7 ANALYSIS; ASSISTANT SECRETARY FOR INFRASTRUCTURE
8 PROTECTION.—

9 (1) ASSISTANT SECRETARY FOR INFORMATION
10 ANALYSIS.—There shall be in the Department an
11 Assistant Secretary for Information Analysis, who
12 shall be appointed by the President.

13 (2) ASSISTANT SECRETARY FOR INFRASTRUC-
14 TURE PROTECTION.—There shall be in the Depart-
15 ment an Assistant Secretary for Infrastructure Pro-
16 tection, who shall be appointed by the President.

17 (3) RESPONSIBILITIES.—The Assistant Sec-
18 retary for Information Analysis and the Assistant
19 Secretary for Infrastructure Protection shall assist
20 the Under Secretary for Information Analysis and
21 Infrastructure Protection in discharging the respon-
22 sibilities of the Under Secretary under this section.

23 (c) DISCHARGE OF INFORMATION ANALYSIS AND IN-
24 FRASTRUCTURE PROTECTION.—The Secretary shall en-
25 sure that the responsibilities of the Department regarding

1 information analysis and infrastructure protection are car-
2 ried out through the Under Secretary for Information
3 Analysis and Infrastructure Protection.

4 (d) RESPONSIBILITIES OF UNDER SECRETARY.—
5 Subject to the direction and control of the Secretary, the
6 responsibilities of the Under Secretary for Information
7 Analysis and Infrastructure Protection shall be as follows:

8 (1) To access, receive, and analyze law enforce-
9 ment information, intelligence information, and
10 other information from agencies of the Federal Gov-
11 ernment, State and local government agencies (in-
12 cluding law enforcement agencies), and private sec-
13 tor entities, and to integrate such information in
14 order to—

15 (A) identify and assess the nature and
16 scope of terrorist threats to the homeland;

17 (B) detect and identify threats of terrorism
18 against the United States; and

19 (C) understand such threats in light of ac-
20 tual and potential vulnerabilities of the home-
21 land.

22 (2) To carry out comprehensive assessments of
23 the vulnerabilities of the key resources and critical
24 infrastructure of the United States, including the
25 performance of risk assessments to determine the

1 risks posed by particular types of terrorist attacks
2 within the United States (including an assessment of
3 the probability of success of such attacks and the
4 feasibility and potential efficacy of various counter-
5 measures to such attacks).

6 (3) To integrate relevant information, analyses,
7 and vulnerability assessments (whether such infor-
8 mation, analyses, or assessments are provided or
9 produced by the Department or others) in order to
10 identify priorities for protective and support meas-
11 ures by the Department, other agencies of the Fed-
12 eral Government, State and local government agen-
13 cies and authorities, the private sector, and other en-
14 tities.

15 (4) To ensure, pursuant to section 202, the
16 timely and efficient access by the Department to all
17 information necessary to discharge the responsibil-
18 ities under this section, including obtaining such in-
19 formation from other agencies of the Federal Gov-
20 ernment.

21 (5) To develop a comprehensive national plan
22 for securing the key resources and critical infra-
23 structure of the United States, including power pro-
24 duction, generation, and distribution systems, infor-
25 mation technology and telecommunications systems

1 (including satellites), electronic financial and prop-
2 erty record storage and transmission systems, emer-
3 gency preparedness communications systems, and
4 the physical and technological assets that support
5 such systems.

6 (6) To recommend measures necessary to pro-
7 tect the key resources and critical infrastructure of
8 the United States in coordination with other agen-
9 cies of the Federal Government and in cooperation
10 with State and local government agencies and au-
11 thorities, the private sector, and other entities.

12 (7) To administer the Homeland Security Advi-
13 sory System, including—

14 (A) exercising primary responsibility for
15 public advisories related to threats to homeland
16 security; and

17 (B) in coordination with other agencies of
18 the Federal Government, providing specific
19 warning information, and advice about appro-
20 priate protective measures and counter-
21 measures, to State and local government agen-
22 cies and authorities, the private sector, other
23 entities, and the public.

24 (8) To review, analyze, and make recommenda-
25 tions for improvements in the policies and proce-

1 dures governing the sharing of law enforcement in-
2 formation, intelligence information, intelligence-re-
3 lated information, and other information relating to
4 homeland security within the Federal Government
5 and between the Federal Government and State and
6 local government agencies and authorities.

7 (9) To disseminate, as appropriate, information
8 analyzed by the Department within the Department,
9 to other agencies of the Federal Government with
10 responsibilities relating to homeland security, and to
11 agencies of State and local governments and private
12 sector entities with such responsibilities in order to
13 assist in the deterrence, prevention, preemption of,
14 or response to, terrorist attacks against the United
15 States.

16 (10) To consult with the Director of Central In-
17 telligence and other appropriate intelligence, law en-
18 forcement, or other elements of the Federal Govern-
19 ment to establish collection priorities and strategies
20 for information, including law enforcement-related
21 information, relating to threats of terrorism against
22 the United States through such means as the rep-
23 resentation of the Department in discussions regard-
24 ing requirements and priorities in the collection of
25 such information.

1 (11) To consult with State and local govern-
2 ments and private sector entities to ensure appro-
3 priate exchanges of information, including law en-
4 forcement-related information, relating to threats of
5 terrorism against the United States.

6 (12) To ensure that—

7 (A) any material received pursuant to this
8 Act is protected from unauthorized disclosure
9 and handled and used only for the performance
10 of official duties; and

11 (B) any intelligence information under this
12 Act is shared, retained, and disseminated con-
13 sistent with the authority of the Director of
14 Central Intelligence to protect intelligence
15 sources and methods under the National Secu-
16 rity Act of 1947 (50 U.S.C. 401 et seq.) and
17 related procedures and, as appropriate, similar
18 authorities of the Attorney General concerning
19 sensitive law enforcement information.

20 (13) To request additional information from
21 other agencies of the Federal Government, State and
22 local government agencies, and the private sector re-
23 lating to threats of terrorism in the United States,
24 or relating to other areas of responsibility assigned
25 by the Secretary, including the entry into coopera-

1 tive agreements through the Secretary to obtain
2 such information.

3 (14) To establish and utilize, in conjunction
4 with the chief information officer of the Department,
5 a secure communications and information technology
6 infrastructure, including data-mining and other ad-
7 vanced analytical tools, in order to access, receive,
8 and analyze data and information in furtherance of
9 the responsibilities under this section, and to dis-
10 seminate information acquired and analyzed by the
11 Department, as appropriate.

12 (15) To ensure, in conjunction with the chief
13 information officer of the Department, that any in-
14 formation databases and analytical tools developed
15 or utilized by the Department—

16 (A) are compatible with one another and
17 with relevant information databases of other
18 agencies of the Federal Government; and

19 (B) treat information in such databases in
20 a manner that complies with applicable Federal
21 law on privacy.

22 (16) To coordinate training and other support
23 to the elements and personnel of the Department,
24 other agencies of the Federal Government, and State
25 and local governments that provide information to

1 the Department, or are consumers of information
2 provided by the Department, in order to facilitate
3 the identification and sharing of information re-
4 vealed in their ordinary duties and the optimal utili-
5 zation of information received from the Department.

6 (17) To coordinate with elements of the intel-
7 ligence community and with Federal, State, and
8 local law enforcement agencies, and the private sec-
9 tor, as appropriate.

10 (18) To provide intelligence and information
11 analysis and support to other elements of the De-
12 partment.

13 (19) To perform such other duties relating to
14 such responsibilities as the Secretary may provide.

15 (e) STAFF.—

16 (1) IN GENERAL.—The Secretary shall provide
17 the Directorate with a staff of analysts having ap-
18 propriate expertise and experience to assist the Di-
19 rectorate in discharging responsibilities under this
20 section.

21 (2) PRIVATE SECTOR ANALYSTS.—Analysts
22 under this subsection may include analysts from the
23 private sector.

1 (3) SECURITY CLEARANCES.—Analysts under
2 this subsection shall possess security clearances ap-
3 propriate for their work under this section.

4 (f) DETAIL OF PERSONNEL.—

5 (1) IN GENERAL.—In order to assist the Direc-
6 torate in discharging responsibilities under this sec-
7 tion, personnel of the agencies referred to in para-
8 graph (2) may be detailed to the Department for the
9 performance of analytic functions and related duties.

10 (2) COVERED AGENCIES.—The agencies re-
11 ferred to in this paragraph are as follows:

12 (A) The Department of State.

13 (B) The Central Intelligence Agency.

14 (C) The Federal Bureau of Investigation.

15 (D) The National Security Agency.

16 (E) The National Imagery and Mapping
17 Agency.

18 (F) The Defense Intelligence Agency.

19 (G) Any other agency of the Federal Gov-
20 ernment that the President considers appro-
21 priate.

22 (3) COOPERATIVE AGREEMENTS.—The Sec-
23 retary and the head of the agency concerned may
24 enter into cooperative agreements for the purpose of
25 detailing personnel under this subsection.

1 (4) BASIS.—The detail of personnel under this
2 subsection may be on a reimbursable or non-reim-
3 bursable basis.

4 (g) FUNCTIONS TRANSFERRED.—In accordance with
5 title XV, there shall be transferred to the Secretary, for
6 assignment to the Under Secretary for Information Anal-
7 ysis and Infrastructure Protection under this section, the
8 functions, personnel, assets, and liabilities of the following:

9 (1) The National Infrastructure Protection
10 Center of the Federal Bureau of Investigation (other
11 than the Computer Investigations and Operations
12 Section), including the functions of the Attorney
13 General relating thereto.

14 (2) The National Communications System of
15 the Department of Defense, including the functions
16 of the Secretary of Defense relating thereto.

17 (3) The Critical Infrastructure Assurance Of-
18 fice of the Department of Commerce, including the
19 functions of the Secretary of Commerce relating
20 thereto.

21 (4) The National Infrastructure Simulation and
22 Analysis Center of the Department of Energy and
23 the energy security and assurance program and ac-
24 tivities of the Department, including the functions of
25 the Secretary of Energy relating thereto.

1 (5) The Federal Computer Incident Response
2 Center of the General Services Administration, in-
3 cluding the functions of the Administrator of Gen-
4 eral Services relating thereto.

5 (h) INCLUSION OF CERTAIN ELEMENTS OF THE DE-
6 PARTMENT AS ELEMENTS OF THE INTELLIGENCE COM-
7 MUNITY.—Section 3(4) of the National Security Act of
8 1947 (50 U.S.C. 401(a)) is amended—

9 (1) by striking “and” at the end of subpara-
10 graph (I);

11 (2) by redesignating subparagraph (J) as sub-
12 paragraph (K); and

13 (3) by inserting after subparagraph (I) the fol-
14 lowing new subparagraph:

15 “(J) the elements of the Department of
16 Homeland Security concerned with the analyses
17 of foreign intelligence information; and”.

18 **SEC. 202. ACCESS TO INFORMATION.**

19 (a) IN GENERAL.—

20 (1) THREAT AND VULNERABILITY INFORMA-
21 TION.—Except as otherwise directed by the Presi-
22 dent, the Secretary shall have such access as the
23 Secretary considers necessary to all information, in-
24 cluding reports, assessments, analyses, and
25 unevaluated intelligence relating to threats of ter-

1 rorism against the United States and to other areas
2 of responsibility assigned by the Secretary, and to all
3 information concerning infrastructure or other
4 vulnerabilities of the United States to terrorism,
5 whether or not such information has been analyzed,
6 that may be collected, possessed, or prepared by any
7 agency of the Federal Government.

8 (2) OTHER INFORMATION.—The Secretary shall
9 also have access to other information relating to
10 matters under the responsibility of the Secretary
11 that may be collected, possessed, or prepared by an
12 agency of the Federal Government as the President
13 may further provide.

14 (b) MANNER OF ACCESS.—Except as otherwise di-
15 rected by the President, with respect to information to
16 which the Secretary has access pursuant to this section—

17 (1) the Secretary may obtain such material
18 upon request, and may enter into cooperative ar-
19 rangements with other executive agencies to provide
20 such material or provide Department officials with
21 access to it on a regular or routine basis, including
22 requests or arrangements involving broad categories
23 of material, access to electronic databases, or both;
24 and

1 (2) regardless of whether the Secretary has
2 made any request or entered into any cooperative ar-
3 rangement pursuant to paragraph (1), all agencies
4 of the Federal Government shall promptly provide to
5 the Secretary—

6 (A) all reports (including information re-
7 ports containing intelligence which has not been
8 fully evaluated), assessments, and analytical in-
9 formation relating to threats of terrorism
10 against the United States and to other areas of
11 responsibility assigned by the Secretary;

12 (B) all information concerning the vulner-
13 ability of the infrastructure of the United
14 States, or other vulnerabilities of the United
15 States, to terrorism, whether or not such infor-
16 mation has been analyzed;

17 (C) all other information relating to sig-
18 nificant and credible threats of terrorism
19 against the United States, whether or not such
20 information has been analyzed; and

21 (D) such other information or material as
22 the President may direct.

23 (c) TREATMENT UNDER CERTAIN LAWS.—The Sec-
24 retary shall be deemed to be a Federal law enforcement,
25 intelligence, protective, national defense, immigration, or

1 national security official, and shall be provided with all
2 information from law enforcement agencies that is re-
3 quired to be given to the Director of Central Intelligence,
4 under any provision of the following:

5 (1) The USA PATRIOT Act of 2001 (Public
6 Law 107–56).

7 (2) Section 2517(6) of title 18, United States
8 Code.

9 (3) Rule 6(e)(3)(C) of the Federal Rules of
10 Criminal Procedure.

11 (d) ACCESS TO INTELLIGENCE AND OTHER INFOR-
12 MATION.—

13 (1) ACCESS BY ELEMENTS OF FEDERAL GOV-
14 ERNMENT.—Nothing in this title shall preclude any
15 element of the intelligence community (as that term
16 is defined in section 3(4) of the National Security
17 Act of 1947 (50 U.S.C. 401a(4)), or other any ele-
18 ment of the Federal Government with responsibility
19 for analyzing terrorist threat information, from re-
20 ceiving any intelligence or other information relating
21 to terrorism.

22 (2) SHARING OF INFORMATION.—The Sec-
23 retary, in consultation with the Director of Central
24 Intelligence, shall work to ensure that intelligence or
25 other information relating to terrorism to which the

1 Department has access is appropriately shared with
2 the elements of the Federal Government referred to
3 in paragraph (1), as well as with State and local
4 governments, as appropriate.

5 **Subtitle B—Critical Infrastructure** 6 **Information**

7 **SEC. 211. SHORT TITLE.**

8 This subtitle may be cited as the “Critical Infrastruc-
9 ture Information Act of 2002”.

10 **SEC. 212. DEFINITIONS.**

11 In this subtitle:

12 (1) AGENCY.—The term “agency” has the
13 meaning given it in section 551 of title 5, United
14 States Code.

15 (2) COVERED FEDERAL AGENCY.—The term
16 “covered Federal agency” means the Department of
17 Homeland Security.

18 (3) CRITICAL INFRASTRUCTURE INFORMA-
19 TION.—The term “critical infrastructure informa-
20 tion” means information not customarily in the pub-
21 lic domain and related to the security of critical in-
22 frastructure or protected systems—

23 (A) actual, potential, or threatened inter-
24 ference with, attack on, compromise of, or inca-
25 pacitation of critical infrastructure or protected

1 systems by either physical or computer-based
2 attack or other similar conduct (including the
3 misuse of or unauthorized access to all types of
4 communications and data transmission systems)
5 that violates Federal, State, or local law, harms
6 interstate commerce of the United States, or
7 threatens public health or safety;

8 (B) the ability of any critical infrastruc-
9 ture or protected system to resist such inter-
10 ference, compromise, or incapacitation, includ-
11 ing any planned or past assessment, projection,
12 or estimate of the vulnerability of critical infra-
13 structure or a protected system, including secu-
14 rity testing, risk evaluation thereto, risk man-
15 agement planning, or risk audit; or

16 (C) any planned or past operational prob-
17 lem or solution regarding critical infrastructure
18 or protected systems, including repair, recovery,
19 reconstruction, insurance, or continuity, to the
20 extent it is related to such interference, com-
21 promise, or incapacitation.

22 (4) CRITICAL INFRASTRUCTURE PROTECTION
23 PROGRAM.—The term “critical infrastructure protec-
24 tion program” means any component or bureau of a
25 covered Federal agency that has been designated by

1 the President or any agency head to receive critical
2 infrastructure information.

3 (5) INFORMATION SHARING AND ANALYSIS OR-
4 GANIZATION.—The term “Information Sharing and
5 Analysis Organization” means any formal or infor-
6 mal entity or collaboration created or employed by
7 public or private sector organizations, for purposes
8 of—

9 (A) gathering and analyzing critical infra-
10 structure information in order to better under-
11 stand security problems and interdependencies
12 related to critical infrastructure and protected
13 systems, so as to ensure the availability, integ-
14 rity, and reliability thereof;

15 (B) communicating or disclosing critical
16 infrastructure information to help prevent, de-
17 tect, mitigate, or recover from the effects of a
18 interference, compromise, or a incapacitation
19 problem related to critical infrastructure or pro-
20 tected systems; and

21 (C) voluntarily disseminating critical infra-
22 structure information to its members, State,
23 local, and Federal Governments, or any other
24 entities that may be of assistance in carrying

1 out the purposes specified in subparagraphs (A)
2 and (B).

3 (6) PROTECTED SYSTEM.—The term “protected
4 system”—

5 (A) means any service, physical or com-
6 puter-based system, process, or procedure that
7 directly or indirectly affects the viability of a fa-
8 cility of critical infrastructure; and

9 (B) includes any physical or computer-
10 based system, including a computer, computer
11 system, computer or communications network,
12 or any component hardware or element thereof,
13 software program, processing instructions, or
14 information or data in transmission or storage
15 therein, irrespective of the medium of trans-
16 mission or storage.

17 (7) VOLUNTARY.—

18 (A) IN GENERAL.—The term “voluntary”,
19 in the case of any submittal of critical infra-
20 structure information to a covered Federal
21 agency, means the submittal thereof in the ab-
22 sence of such agency’s exercise of legal author-
23 ity to compel access to or submission of such
24 information and may be accomplished by a sin-
25 gle entity or an Information Sharing and Anal-

1 ysis Organization on behalf of itself or its mem-
2 bers.

3 (B) EXCLUSIONS.—The term
4 “voluntary”—

5 (i) in the case of any action brought
6 under the securities laws as is defined in
7 section 3(a)(47) of the Securities Ex-
8 change Act of 1934 (15 U.S.C.
9 78c(a)(47))—

10 (I) does not include information
11 or statements contained in any docu-
12 ments or materials filed with the Se-
13 curities and Exchange Commission, or
14 with Federal banking regulators, pur-
15 suant to section 12(i) of the Securities
16 Exchange Act of 1934 (15 U.S.C.
17 781(I)); and

18 (II) with respect to the submittal
19 of critical infrastructure information,
20 does not include any disclosure or
21 writing that when made accompanied
22 the solicitation of an offer or a sale of
23 securities; and

24 (ii) does not include information or
25 statements submitted or relied upon as a

1 basis for making licensing or permitting
2 determinations, or during regulatory pro-
3 ceedings.

4 **SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE**
5 **PROTECTION PROGRAM.**

6 A critical infrastructure protection program may be
7 designated as such by one of the following:

- 8 (1) The President.
- 9 (2) The Secretary of Homeland Security.

10 **SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRIT-**
11 **ICAL INFRASTRUCTURE INFORMATION.**

12 (a) PROTECTION.—

13 (1) IN GENERAL.—Notwithstanding any other
14 provision of law, critical infrastructure information
15 (including the identity of the submitting person or
16 entity) that is voluntarily submitted to a covered
17 Federal agency for use by that agency regarding the
18 security of critical infrastructure and protected sys-
19 tems, analysis, warning, interdependency study, re-
20 covery, reconstitution, or other informational pur-
21 pose, when accompanied by an express statement
22 specified in paragraph (2)—

23 (A) shall be exempt from disclosure under
24 section 552 of title 5, United States Code (com-

1 monly referred to as the Freedom of Informa-
2 tion Act);

3 (B) shall not be subject to any agency
4 rules or judicial doctrine regarding ex parte
5 communications with a decision making official;

6 (C) shall not, without the written consent
7 of the person or entity submitting such infor-
8 mation, be used directly by such agency, any
9 other Federal, State, or local authority, or any
10 third party, in any civil action arising under
11 Federal or State law if such information is sub-
12 mitted in good faith;

13 (D) shall not, without the written consent
14 of the person or entity submitting such infor-
15 mation, be used or disclosed by any officer or
16 employee of the United States for purposes
17 other than the purposes of this subtitle,
18 except—

19 (i) in furtherance of an investigation
20 or the prosecution of a criminal act; or

21 (ii) when disclosure of the information
22 would be—

23 (I) to either House of Congress,
24 or to the extent of matter within its
25 jurisdiction, any committee or sub-

1 committee thereof, any joint com-
2 mittee thereof or subcommittee of any
3 such joint committee; or

4 (II) to the Comptroller General,
5 or any authorized representative of
6 the Comptroller General, in the course
7 of the performance of the duties of
8 the General Accounting Office.

9 (E) shall not, if provided to a State or
10 local government or government agency—

11 (i) be made available pursuant to any
12 State or local law requiring disclosure of
13 information or records;

14 (ii) otherwise be disclosed or distrib-
15 uted to any party by said State or local
16 government or government agency without
17 the written consent of the person or entity
18 submitting such information; or

19 (iii) be used other than for the pur-
20 pose of protecting critical infrastructure or
21 protected systems, or in furtherance of an
22 investigation or the prosecution of a crimi-
23 nal act; and

1 (F) does not constitute a waiver of any ap-
2 plicable privilege or protection provided under
3 law, such as trade secret protection.

4 (2) EXPRESS STATEMENT.—For purposes of
5 paragraph (1), the term “express statement”, with
6 respect to information or records, means—

7 (A) in the case of written information or
8 records, a written marking on the information
9 or records substantially similar to the following:
10 “This information is voluntarily submitted to
11 the Federal Government in expectation of pro-
12 tection from disclosure as provided by the provi-
13 sions of the Critical Infrastructure Information
14 Act of 2002.”; or

15 (B) in the case of oral information, a simi-
16 lar written statement submitted within a rea-
17 sonable period following the oral communica-
18 tion.

19 (b) LIMITATION.—No communication of critical in-
20 frastructure information to a covered Federal agency
21 made pursuant to this subtitle shall be considered to be
22 an action subject to the requirements of the Federal Advi-
23 sory Committee Act (5 U.S.C. App. 2).

24 (c) INDEPENDENTLY OBTAINED INFORMATION.—
25 Nothing in this section shall be construed to limit or other-

1 wise affect the ability of a State, local, or Federal Govern-
2 ment entity, agency, or authority, or any third party,
3 under applicable law, to obtain critical infrastructure in-
4 formation in a manner not covered by subsection (a), in-
5 cluding any information lawfully and properly disclosed
6 generally or broadly to the public and to use such informa-
7 tion in any manner permitted by law.

8 (d) TREATMENT OF VOLUNTARY SUBMITTAL OF IN-
9 FORMATION.—The voluntary submittal to the Government
10 of information or records that are protected from disclo-
11 sure by this subtitle shall not be construed to constitute
12 compliance with any requirement to submit such informa-
13 tion to a Federal agency under any other provision of law.

14 (e) PROCEDURES.—

15 (1) IN GENERAL.—The Secretary of the De-
16 partment of Homeland Security shall, in consulta-
17 tion with appropriate representatives of the National
18 Security Council and the Office of Science and Tech-
19 nology Policy, establish uniform procedures for the
20 receipt, care, and storage by Federal agencies of
21 critical infrastructure information that is voluntarily
22 submitted to the Government. The procedures shall
23 be established not later than 90 days after the date
24 of the enactment of this subtitle.

1 (2) ELEMENTS.—The procedures established
2 under paragraph (1) shall include mechanisms
3 regarding—

4 (A) the acknowledgement of receipt by
5 Federal agencies of critical infrastructure infor-
6 mation that is voluntarily submitted to the Gov-
7 ernment;

8 (B) the maintenance of the identification
9 of such information as voluntarily submitted to
10 the Government for purposes of and subject to
11 the provisions of this subtitle;

12 (C) the care and storage of such informa-
13 tion; and

14 (D) the protection and maintenance of the
15 confidentiality of such information so as to per-
16 mit the sharing of such information within the
17 Federal Government and with State and local
18 governments, and the issuance of notices and
19 warnings related to the protection of critical in-
20 frastructure and protected systems, in such
21 manner as to protect from public disclosure the
22 identity of the submitting person or entity, or
23 information that is proprietary, business sen-
24 sitive, relates specifically to the submitting per-

1 son or entity, and is otherwise not appropriately
2 in the public domain.

3 (f) PENALTIES.—Whoever, being an officer or em-
4 ployee of the United States or of any department or agen-
5 cy thereof, knowingly publishes, divulges, discloses, or
6 makes known in any manner or to any extent not author-
7 ized by law, any critical infrastructure information pro-
8 tected from disclosure by this subtitle coming to him in
9 the course of this employment or official duties or by rea-
10 son of any examination or investigation made by, or re-
11 turn, report, or record made to or filed with, such depart-
12 ment or agency or officer or employee thereof, shall be
13 fined under title 18 of the United States Code, imprisoned
14 not more than 1 year, or both, and shall be removed from
15 office or employment.

16 (g) AUTHORITY TO ISSUE WARNINGS.—The Federal
17 Government may provide advisories, alerts, and warnings
18 to relevant companies, targeted sectors, other govern-
19 mental entities, or the general public regarding potential
20 threats to critical infrastructure as appropriate. In issuing
21 a warning, the Federal Government shall take appropriate
22 actions to protect from disclosure—

23 (1) the source of any voluntarily submitted crit-
24 ical infrastructure information that forms the basis
25 for the warning; or

1 (2) information that is proprietary, business
2 sensitive, relates specifically to the submitting per-
3 son or entity, or is otherwise not appropriately in
4 the public domain.

5 (h) **AUTHORITY TO DELEGATE.**—The President may
6 delegate authority to a critical infrastructure protection
7 program, designated under subsection (e), to enter into
8 a voluntary agreement to promote critical infrastructure
9 security, including with any Information Sharing and
10 Analysis Organization, or a plan of action as otherwise
11 defined in section 708 of the Defense Production Act of
12 1950 (50 U.S.C. App. 2158).

13 **SEC. 215. NO PRIVATE RIGHT OF ACTION.**

14 Nothing in this subtitle may be construed to create
15 a private right of action for enforcement of any provision
16 of this Act.

17 **Subtitle C—Information Security**

18 **SEC. 221. PROCEDURES FOR SHARING INFORMATION.**

19 The Secretary shall establish procedures on the use
20 of information shared under this title that—

21 (1) limit the dissemination of such informa-
22 tion to ensure that it is not used for an unauthor-
23 ized purpose;

24 (2) ensure the security and confidentiality of
25 such information;

1 (3) protect the constitutional and statutory
2 rights of any individuals who are subjects of such in-
3 formation; and

4 (4) provide data integrity through the timely re-
5 moval and destruction of obsolete or erroneous
6 names and information.

7 **SEC. 222. PRIVACY OFFICER.**

8 The Secretary shall appoint a senior official in the
9 Department to assume primary responsibility for privacy
10 policy, including—

11 (1) assuring that the use of technologies sus-
12 tain, and do not erode, privacy protections relating
13 to the use, collection, and disclosure of personal in-
14 formation;

15 (2) assuring that personal information con-
16 tained in Privacy Act systems of records is handled
17 in full compliance with fair information practices as
18 set out in the Privacy Act of 1974;

19 (3) evaluating legislative and regulatory pro-
20 posals involving collection, use, and disclosure of
21 personal information by the Federal Government;

22 (4) conducting a privacy impact assessment of
23 proposed rules of the Department or that of the De-
24 partment on the privacy of personal information, in-

1 including the type of personal information collected
2 and the number of people affected; and

3 (5) preparing a report to Congress on an an-
4 nual basis on activities of the Department that af-
5 fect privacy, including complaints of privacy viola-
6 tions, implementation of the Privacy Act of 1974, in-
7 ternal controls, and other matters.

8 **SEC. 223. ENHANCEMENT OF NON-FEDERAL**
9 **CYBERSECURITY.**

10 In carrying out the responsibilities under section 201,
11 the Under Secretary for Information Analysis and Infra-
12 structure Protection shall—

13 (1) as appropriate, provide to State and local
14 government entities, and upon request to private en-
15 tities that own or operate critical information
16 systems—

17 (A) analysis and warnings related to
18 threats to, and vulnerabilities of, critical infor-
19 mation systems; and

20 (B) in coordination with the Under Sec-
21 retary for Emergency Preparedness and Re-
22 sponse, crisis management support in response
23 to threats to, or attacks on, critical information
24 systems; and

1 (2) as appropriate, provide technical assistance,
2 upon request, to the private sector and other govern-
3 ment entities, in coordination with the Under Sec-
4 retary for Emergency Preparedness and Response,
5 with respect to emergency recovery plans to respond
6 to major failures of critical information systems.

7 **SEC. 224. NET GUARD.**

8 The Under Secretary for Information Analysis and
9 Infrastructure Protection may establish a national tech-
10 nology guard, to be known as “NET Guard”, comprised
11 of local teams of volunteers with expertise in relevant
12 areas of science and technology, to assist local commu-
13 nities to respond and recover from attacks on information
14 systems and communications networks.

15 **SEC. 225. CYBER SECURITY ENHANCEMENT ACT OF 2002.**

16 (a) **SHORT TITLE.**—This section may be cited as the
17 “Cyber Security Enhancement Act of 2002”.

18 (b) **AMENDMENT OF SENTENCING GUIDELINES RE-**
19 **LATING TO CERTAIN COMPUTER CRIMES.**—

20 (1) **DIRECTIVE TO THE UNITED STATES SEN-**
21 **TENCING COMMISSION.**—Pursuant to its authority
22 under section 994(p) of title 28, United States Code,
23 and in accordance with this subsection, the United
24 States Sentencing Commission shall review and, if
25 appropriate, amend its guidelines and its policy

1 statements applicable to persons convicted of an of-
2 fense under section 1030 of title 18, United States
3 Code.

4 (2) REQUIREMENTS.—In carrying out this sub-
5 section, the Sentencing Commission shall—

6 (A) ensure that the sentencing guidelines
7 and policy statements reflect the serious nature
8 of the offenses described in paragraph (1), the
9 growing incidence of such offenses, and the
10 need for an effective deterrent and appropriate
11 punishment to prevent such offenses;

12 (B) consider the following factors and the
13 extent to which the guidelines may or may not
14 account for them—

15 (i) the potential and actual loss result-
16 ing from the offense;

17 (ii) the level of sophistication and
18 planning involved in the offense;

19 (iii) whether the offense was com-
20 mitted for purposes of commercial advan-
21 tage or private financial benefit;

22 (iv) whether the defendant acted with
23 malicious intent to cause harm in commit-
24 ting the offense;

1 (v) the extent to which the offense
2 violated the privacy rights of individuals
3 harmed;

4 (vi) whether the offense involved a
5 computer used by the government in fur-
6 therance of national defense, national secu-
7 rity, or the administration of justice;

8 (vii) whether the violation was in-
9 tended to or had the effect of significantly
10 interfering with or disrupting a critical in-
11 frastructure; and

12 (viii) whether the violation was in-
13 tended to or had the effect of creating a
14 threat to public health or safety, or injury
15 to any person;

16 (C) assure reasonable consistency with
17 other relevant directives and with other sen-
18 tencing guidelines;

19 (D) account for any additional aggravating
20 or mitigating circumstances that might justify
21 exceptions to the generally applicable sentencing
22 ranges;

23 (E) make any necessary conforming
24 changes to the sentencing guidelines; and

1 (F) assure that the guidelines adequately
2 meet the purposes of sentencing as set forth in
3 section 3553(a)(2) of title 18, United States
4 Code.

5 (c) STUDY AND REPORT ON COMPUTER CRIMES.—
6 Not later than May 1, 2003, the United States Sentencing
7 Commission shall submit a brief report to Congress that
8 explains any actions taken by the Sentencing Commission
9 in response to this section and includes any recommenda-
10 tions the Commission may have regarding statutory pen-
11 alties for offenses under section 1030 of title 18, United
12 States Code.

13 (d) EMERGENCY DISCLOSURE EXCEPTION.—

14 (1) IN GENERAL.—Section 2702(b) of title 18,
15 United States Code, is amended—

16 (A) in paragraph (5), by striking “or” at
17 the end;

18 (B) in paragraph (6)(A), by inserting “or”
19 at the end;

20 (C) by striking paragraph (6)(C); and

21 (D) by adding at the end the following:

22 “(7) to a Federal, State, or local governmental
23 entity, if the provider, in good faith, believes that an
24 emergency involving danger of death or serious phys-
25 ical injury to any person requires disclosure without

1 delay of communications relating to the emer-
2 gency.”.

3 (2) REPORTING OF DISCLOSURES.—A govern-
4 ment entity that receives a disclosure under section
5 2702(b) of title 18, United States Code, shall file,
6 not later than 90 days after such disclosure, a report
7 to the Attorney General stating the paragraph of
8 that section under which the disclosure was made,
9 the date of the disclosure, the entity to which the
10 disclosure was made, the number of customers or
11 subscribers to whom the information disclosed per-
12 tained, and the number of communications, if any,
13 that were disclosed. The Attorney General shall pub-
14 lish all such reports into a single report to be sub-
15 mitted to Congress 1 year after the date of enact-
16 ment of this Act.

17 (e) GOOD FAITH EXCEPTION.—Section 2520(d)(3) of
18 title 18, United States Code, is amended by inserting “or
19 2511(2)(i)” after “2511(3)”.

20 (f) INTERNET ADVERTISING OF ILLEGAL DEVICES.—
21 Section 2512(1)(c) of title 18, United States Code, is
22 amended—

23 (1) by inserting “or disseminates by electronic
24 means” after “or other publication”; and

1 (2) by inserting “knowing the content of the
2 advertisement and” before “knowing or having rea-
3 son to know”.

4 (g) STRENGTHENING PENALTIES.—Section 1030(c)
5 of title 18, United States Code, is amended—

6 (1) by striking “and” at the end of paragraph
7 (3);

8 (2) in each of subparagraphs (A) and (C) of
9 paragraph (4), by inserting “except as provided in
10 paragraph (5),” before “a fine under this title”;

11 (3) in paragraph (4)(C), by striking the period
12 at the end and inserting “; and”; and

13 (4) by adding at the end the following:

14 “(5)(A) if the offender knowingly or recklessly
15 causes or attempts to cause serious bodily injury
16 from conduct in violation of subsection (a)(5)(A)(i),
17 a fine under this title or imprisonment for not more
18 than 20 years, or both; and

19 “(B) if the offender knowingly or recklessly
20 causes or attempts to cause death from conduct in
21 violation of subsection (a)(5)(A)(i), a fine under this
22 title or imprisonment for any term of years or for
23 life, or both.”.

24 (h) PROVIDER ASSISTANCE.—

1 (1) SECTION 2703.—Section 2703(e) of title 18,
2 United States Code, is amended by inserting “, stat-
3 utory authorization” after “subpoena”.

4 (2) SECTION 2511.—Section 2511(2)(a)(ii) of
5 title 18, United States Code, is amended by insert-
6 ing “, statutory authorization,” after “court order”
7 the last place it appears.

8 (i) EMERGENCIES.—Section 3125(a)(1) of title 18,
9 United States Code, is amended—

10 (1) in subparagraph (A), by striking “or” at
11 the end;

12 (2) in subparagraph (B), by striking the comma
13 at the end and inserting a semicolon; and

14 (3) by adding at the end the following:

15 “(C) an immediate threat to a national se-
16 curity interest; or

17 “(D) an ongoing attack on a protected
18 computer (as defined in section 1030) that con-
19 stitutes a crime punishable by a term of impris-
20 onment greater than one year;”.

21 (j) PROTECTING PRIVACY.—

22 (1) SECTION 2511.—Section 2511(4) of title 18,
23 United States Code, is amended—

24 (A) by striking paragraph (b); and

1 (B) by redesignating paragraph (c) as
2 paragraph (b).

3 (2) SECTION 2701.—Section 2701(b) of title 18,
4 United States Code, is amended—

5 (A) in paragraph (1), by inserting “, or in
6 furtherance of any criminal or tortious act in
7 violation of the Constitution or laws of the
8 United States or any State” after “commercial
9 gain”;

10 (B) in paragraph (1)(A), by striking “one
11 year” and inserting “5 years”;

12 (C) in paragraph (1)(B), by striking “two
13 years” and inserting “10 years”; and

14 (D) by striking paragraph (2) and insert-
15 ing the following:

16 “(2) in any other case—

17 “(A) a fine under this title or imprison-
18 ment for not more than 1 year or both, in the
19 case of a first offense under this paragraph;
20 and

21 “(B) a fine under this title or imprison-
22 ment for not more than 5 years, or both, in the
23 case of an offense under this subparagraph that
24 occurs after a conviction of another offense
25 under this section.”.

1 **Subtitle D—Office of Science and**
2 **Technology**

3 **SEC. 231. ESTABLISHMENT OF OFFICE; DIRECTOR.**

4 (a) ESTABLISHMENT.—

5 (1) IN GENERAL.—There is hereby established
6 within the Department of Justice an Office of
7 Science and Technology (hereinafter in this title re-
8 ferred to as the “Office”).

9 (2) AUTHORITY.—The Office shall be under the
10 general authority of the Assistant Attorney General,
11 Office of Justice Programs, and shall be established
12 within the National Institute of Justice.

13 (b) DIRECTOR.—The Office shall be headed by a Di-
14 rector, who shall be an individual appointed based on ap-
15 proval by the Office of Personnel Management of the exec-
16 utive qualifications of the individual.

17 **SEC. 232. MISSION OF OFFICE; DUTIES.**

18 (a) MISSION.—The mission of the Office shall be—

19 (1) to serve as the national focal point for work
20 on law enforcement technology; and

21 (2) to carry out programs that, through the
22 provision of equipment, training, and technical as-
23 sistance, improve the safety and effectiveness of law
24 enforcement technology and improve access to such

1 technology by Federal, State, and local law enforce-
2 ment agencies.

3 (b) DUTIES.—In carrying out its mission, the Office
4 shall have the following duties:

5 (1) To provide recommendations and advice to
6 the Attorney General.

7 (2) To establish and maintain advisory groups
8 (which shall be exempt from the provisions of the
9 Federal Advisory Committee Act (5 U.S.C. App.)) to
10 assess the law enforcement technology needs of Fed-
11 eral, State, and local law enforcement agencies.

12 (3) To establish and maintain performance
13 standards in accordance with the National Tech-
14 nology Transfer and Advancement Act of 1995
15 (Public Law 104–113) for, and test and evaluate
16 law enforcement technologies that may be used by,
17 Federal, State, and local law enforcement agencies.

18 (4) To establish and maintain a program to
19 certify, validate, and mark or otherwise recognize
20 law enforcement technology products that conform
21 to standards established and maintained by the Of-
22 fice in accordance with the National Technology
23 Transfer and Advancement Act of 1995 (Public Law
24 104–113). The program may, at the discretion of

1 the Office, allow for supplier's declaration of con-
2 formity with such standards.

3 (5) To work with other entities within the De-
4 partment of Justice, other Federal agencies, and the
5 executive office of the President to establish a co-
6 ordinated Federal approach on issues related to law
7 enforcement technology.

8 (6) To carry out research, development, testing,
9 evaluation, and cost-benefit analyses in fields that
10 would improve the safety, effectiveness, and effi-
11 ciency of law enforcement technologies used by Fed-
12 eral, State, and local law enforcement agencies, in-
13 cluding, but not limited to—

14 (A) weapons capable of preventing use by
15 unauthorized persons, including personalized
16 guns;

17 (B) protective apparel;

18 (C) bullet-resistant and explosion-resistant
19 glass;

20 (D) monitoring systems and alarm systems
21 capable of providing precise location informa-
22 tion;

23 (E) wire and wireless interoperable com-
24 munication technologies;

1 (F) tools and techniques that facilitate in-
2 vestigative and forensic work, including com-
3 puter forensics;

4 (G) equipment for particular use in
5 counterterrorism, including devices and tech-
6 nologies to disable terrorist devices;

7 (H) guides to assist State and local law en-
8 forcement agencies;

9 (I) DNA identification technologies; and

10 (J) tools and techniques that facilitate in-
11 vestigations of computer crime.

12 (7) To administer a program of research, devel-
13 opment, testing, and demonstration to improve the
14 interoperability of voice and data public safety com-
15 munications.

16 (8) To serve on the Technical Support Working
17 Group of the Department of Defense, and on other
18 relevant interagency panels, as requested.

19 (9) To develop, and disseminate to State and
20 local law enforcement agencies, technical assistance
21 and training materials for law enforcement per-
22 sonnel, including prosecutors.

23 (10) To operate the regional National Law En-
24 forcement and Corrections Technology Centers and,

1 to the extent necessary, establish additional centers
2 through a competitive process.

3 (11) To administer a program of acquisition,
4 research, development, and dissemination of ad-
5 vanced investigative analysis and forensic tools to as-
6 sist State and local law enforcement agencies in
7 combating cybercrime.

8 (12) To support research fellowships in support
9 of its mission.

10 (13) To serve as a clearinghouse for informa-
11 tion on law enforcement technologies.

12 (14) To represent the United States and State
13 and local law enforcement agencies, as requested, in
14 international activities concerning law enforcement
15 technology.

16 (15) To enter into contracts and cooperative
17 agreements and provide grants, which may require
18 in-kind or cash matches from the recipient, as nec-
19 essary to carry out its mission.

20 (16) To carry out other duties assigned by the
21 Attorney General to accomplish the mission of the
22 Office.

23 (c) COMPETITION REQUIRED.—Except as otherwise
24 expressly provided by law, all research and development

1 carried out by or through the Office shall be carried out
2 on a competitive basis.

3 (d) INFORMATION FROM FEDERAL AGENCIES.—Fed-
4 eral agencies shall, upon request from the Office and in
5 accordance with Federal law, provide the Office with any
6 data, reports, or other information requested, unless com-
7 pliance with such request is otherwise prohibited by law.

8 (e) PUBLICATIONS.—Decisions concerning publica-
9 tions issued by the Office shall rest solely with the Direc-
10 tor of the Office.

11 (f) TRANSFER OF FUNDS.—The Office may transfer
12 funds to other Federal agencies or provide funding to non-
13 Federal entities through grants, cooperative agreements,
14 or contracts to carry out its duties under this section.

15 (g) ANNUAL REPORT.—The Director of the Office
16 shall include with the budget justification materials sub-
17 mitted to Congress in support of the Department of Jus-
18 tice budget for each fiscal year (as submitted with the
19 budget of the President under section 1105(a) of title 31,
20 United States Code) a report on the activities of the Of-
21 fice. Each such report shall include the following:

22 (1) For the period of 5 fiscal years beginning
23 with the fiscal year for which the budget is
24 submitted—

1 (A) the Director’s assessment of the needs
2 of Federal, State, and local law enforcement
3 agencies for assistance with respect to law en-
4 forcement technology and other matters con-
5 sistent with the mission of the Office; and

6 (B) a strategic plan for meeting such
7 needs of such law enforcement agencies.

8 (2) For the fiscal year preceding the fiscal year
9 for which such budget is submitted, a description of
10 the activities carried out by the Office and an eval-
11 uation of the extent to which those activities success-
12 fully meet the needs assessed under paragraph
13 (1)(A) in previous reports.

14 **SEC. 233. DEFINITION OF LAW ENFORCEMENT TECH-**
15 **NOLOGY.**

16 For the purposes of this title, the term “law enforce-
17 ment technology” includes investigative and forensic tech-
18 nologies, corrections technologies, and technologies that
19 support the judicial process.

20 **SEC. 234. ABOLISHMENT OF OFFICE OF SCIENCE AND**
21 **TECHNOLOGY OF NATIONAL INSTITUTE OF**
22 **JUSTICE; TRANSFER OF FUNCTIONS.**

23 (a) **AUTHORITY TO TRANSFER FUNCTIONS.**—The
24 Attorney General may transfer to the Office any other pro-
25 gram or activity of the Department of Justice that the

1 Attorney General, in consultation with the Committee on
2 the Judiciary of the Senate and the Committee on the Ju-
3 diciary of the House of Representatives, determines to be
4 consistent with the mission of the Office.

5 (b) TRANSFER OF PERSONNEL AND ASSETS.—With
6 respect to any function, power, or duty, or any program
7 or activity, that is established in the Office, those employ-
8 ees and assets of the element of the Department of Justice
9 from which the transfer is made that the Attorney General
10 determines are needed to perform that function, power,
11 or duty, or for that program or activity, as the case may
12 be, shall be transferred to the Office.

13 (c) REPORT ON IMPLEMENTATION.—Not later than
14 1 year after the date of the enactment of this Act, the
15 Attorney General shall submit to the Committee on the
16 Judiciary of the Senate and the Committee on the Judici-
17 ary of the House of Representatives a report on the imple-
18 mentation of this title. The report shall—

19 (1) provide an accounting of the amounts and
20 sources of funding available to the Office to carry
21 out its mission under existing authorizations and ap-
22 propriations, and set forth the future funding needs
23 of the Office; and

1 (2) include such other information and rec-
2 ommendations as the Attorney General considers ap-
3 propriate.

4 **SEC. 235. NATIONAL LAW ENFORCEMENT AND CORREC-**
5 **TIONS TECHNOLOGY CENTERS.**

6 (a) IN GENERAL.—The Director of the Office shall
7 operate and support National Law Enforcement and Cor-
8 rections Technology Centers (hereinafter in this section
9 referred to as “Centers”) and, to the extent necessary, es-
10 tablish new centers through a merit-based, competitive
11 process.

12 (b) PURPOSE OF CENTERS.—The purpose of the
13 Centers shall be to—

14 (1) support research and development of law
15 enforcement technology;

16 (2) support the transfer and implementation of
17 technology;

18 (3) assist in the development and dissemination
19 of guidelines and technological standards; and

20 (4) provide technology assistance, information,
21 and support for law enforcement, corrections, and
22 criminal justice purposes.

23 (c) ANNUAL MEETING.—Each year, the Director
24 shall convene a meeting of the Centers in order to foster

1 collaboration and communication between Center partici-
2 pants.

3 (d) REPORT.—Not later than 12 months after the
4 date of the enactment of this Act, the Director shall trans-
5 mit to the Congress a report assessing the effectiveness
6 of the existing system of Centers and identify the number
7 of Centers necessary to meet the technology needs of Fed-
8 eral, State, and local law enforcement in the United
9 States.

10 **SEC. 236. COORDINATION WITH OTHER ENTITIES WITHIN**
11 **DEPARTMENT OF JUSTICE.**

12 Section 102 of the Omnibus Crime Control and Safe
13 Streets Act of 1968 (42 U.S.C. 3712) is amended in sub-
14 section (a)(5) by inserting “coordinate and” before “pro-
15 vide”.

16 **SEC. 237. AMENDMENTS RELATING TO NATIONAL INSTI-**
17 **TUTE OF JUSTICE.**

18 Section 202(c) of the Omnibus Crime Control and
19 Safety Streets Act of 1968 (42 U.S.C. 3722(c)) is
20 amended—

21 (1) in paragraph (3) by inserting “, including
22 cost effectiveness where practical,” before “of
23 projects”; and

24 (2) by striking “and” after the semicolon at the
25 end of paragraph (8), striking the period at the end

1 of paragraph (9) and inserting “; and”, and by add-
2 ing at the end the following:

3 “(10) research and development of tools and
4 technologies relating to prevention, detection, inves-
5 tigation, and prosecution of crime; and

6 “(11) support research, development, testing,
7 training, and evaluation of tools and technology for
8 Federal, State, and local law enforcement agencies.”.

9 **TITLE III—SCIENCE AND TECH-**
10 **NOLOGY IN SUPPORT OF**
11 **HOMELAND SECURITY**

12 **SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECH-**
13 **NOLOGY.**

14 There shall be in the Department a Directorate of
15 Science and Technology headed by an Under Secretary for
16 Science and Technology.

17 **SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE**
18 **UNDER SECRETARY FOR SCIENCE AND TECH-**
19 **NOLOGY.**

20 The Secretary, acting through the Under Secretary
21 for Science and Technology, shall have the responsibility
22 for—

23 (1) advising the Secretary regarding research
24 and development efforts and priorities in support of
25 the Department’s missions;

1 (2) developing, in consultation with other ap-
2 propriate executive agencies, a national policy and
3 strategic plan for, identifying priorities, goals, objec-
4 tives and policies for, and coordinating the Federal
5 Government's civilian efforts to identify and develop
6 countermeasures to chemical, biological, radiological,
7 nuclear, and other emerging terrorist threats, includ-
8 ing the development of comprehensive, research-
9 based definable goals for such efforts and develop-
10 ment of annual measurable objectives and specific
11 targets to accomplish and evaluate the goals for
12 such efforts;

13 (3) supporting the Under Secretary for Infor-
14 mation Analysis and Infrastructure Protection, by
15 assessing and testing homeland security
16 vulnerabilities and possible threats;

17 (4) conducting basic and applied research, de-
18 velopment, demonstration, testing, and evaluation
19 activities that are relevant to any or all elements of
20 the Department, through both intramural and extra-
21 mural programs, except that such responsibility does
22 not extend to human health-related research and de-
23 velopment activities;

24 (5) establishing priorities for, directing, fund-
25 ing, and conducting national research, development,

1 test and evaluation, and procurement of technology
2 and systems for—

3 (A) preventing the importation of chemical,
4 biological, radiological, nuclear, and related
5 weapons and material; and

6 (B) detecting, preventing, protecting
7 against, and responding to terrorist attacks;

8 (6) establishing a system for transferring home-
9 land security developments or technologies to fed-
10 eral, state, local government, and private sector enti-
11 ties;

12 (7) entering into work agreements, joint spon-
13 sorships, contracts, or any other agreements with
14 the Department of Energy regarding the use of the
15 national laboratories or sites and support of the
16 science and technology base at those facilities;

17 (8) collaborating with the Secretary of Agri-
18 culture and the Attorney General as provided in sec-
19 tion 212 of the Agricultural Bioterrorism Protection
20 Act of 2002 (7 U.S.C. 8401), as amended by section
21 1709(b);

22 (9) collaborating with the Secretary of Health
23 and Human Services and the Attorney General in
24 determining any new biological agents and toxins
25 that shall be listed as “select agents” in Appendix

1 A of part 72 of title 42, Code of Federal Regula-
2 tions, pursuant to section 351A of the Public Health
3 Service Act (42 U.S.C. 262a);

4 (10) supporting United States leadership in
5 science and technology;

6 (11) establishing and administering the primary
7 research and development activities of the Depart-
8 ment, including the long-term research and develop-
9 ment needs and capabilities for all elements of the
10 Department;

11 (12) coordinating and integrating all research,
12 development, demonstration, testing, and evaluation
13 activities of the Department;

14 (13) coordinating with other appropriate execu-
15 tive agencies in developing and carrying out the
16 science and technology agenda of the Department to
17 reduce duplication and identify unmet needs; and

18 (14) developing and overseeing the administra-
19 tion of guidelines for merit review of research and
20 development projects throughout the Department,
21 and for the dissemination of research conducted or
22 sponsored by the Department.

1 **SEC. 303. FUNCTIONS TRANSFERRED.**

2 In accordance with title XV, there shall be trans-
3 ferred to the Secretary the functions, personnel, assets,
4 and liabilities of the following entities:

5 (1) The following programs and activities of the
6 Department of Energy, including the functions of
7 the Secretary of Energy relating thereto (but not in-
8 cluding programs and activities relating to the stra-
9 tegic nuclear defense posture of the United States):

10 (A) The chemical and biological national
11 security and supporting programs and activities
12 of the nonproliferation and verification research
13 and development program.

14 (B) The nuclear smuggling programs and
15 activities within the proliferation detection pro-
16 gram of the nonproliferation and verification re-
17 search and development program. The pro-
18 grams and activities described in this subpara-
19 graph may be designated by the President ei-
20 ther for transfer to the Department or for joint
21 operation by the Secretary and the Secretary of
22 Energy.

23 (C) The nuclear assessment program and
24 activities of the assessment, detection, and co-
25 operation program of the international mate-
26 rials protection and cooperation program.

1 Health and Human Services shall set priorities, goals, ob-
2 jectives, and policies and develop a coordinated strategy
3 for such activities in collaboration with the Secretary of
4 Homeland Security to ensure consistency with the national
5 policy and strategic plan developed pursuant to section
6 302(2).

7 (b) EVALUATION OF PROGRESS.—In carrying out
8 subsection (a), the Secretary of Health and Human Serv-
9 ices shall collaborate with the Secretary in developing spe-
10 cific benchmarks and outcome measurements for evalu-
11 ating progress toward achieving the priorities and goals
12 described in such subsection.

13 (c) ADMINISTRATION OF COUNTERMEASURES
14 AGAINST SMALLPOX.—Section 224 of the Public Health
15 Service Act (42 U.S.C. 233) is amended by adding the
16 following:

17 “(p) ADMINISTRATION OF SMALLPOX COUNTER-
18 MEASURES BY HEALTH PROFESSIONALS.—

19 “(1) IN GENERAL.—For purposes of this sec-
20 tion, and subject to other provisions of this sub-
21 section, a covered person shall be deemed to be an
22 employee of the Public Health Service with respect
23 to liability arising out of administration of a covered
24 countermeasure against smallpox to an individual

1 during the effective period of a declaration by the
2 Secretary under paragraph (2)(A).

3 “(2) DECLARATION BY SECRETARY CON-
4 CERNING COUNTERMEASURE AGAINST SMALLPOX.—

5 “(A) AUTHORITY TO ISSUE DECLARA-
6 TION.—

7 “(i) IN GENERAL.—The Secretary
8 may issue a declaration, pursuant to this
9 paragraph, concluding that an actual or
10 potential bioterrorist incident or other ac-
11 tual or potential public health emergency
12 makes advisable the administration of a
13 covered countermeasure to a category or
14 categories of individuals.

15 “(ii) COVERED COUNTERMEASURE.—
16 The Secretary shall specify in such dec-
17 laration the substance or substances that
18 shall be considered covered counter-
19 measures (as defined in paragraph (8)(A))
20 for purposes of administration to individ-
21 uals during the effective period of the dec-
22 laration.

23 “(iii) EFFECTIVE PERIOD.—The Sec-
24 retary shall specify in such declaration the
25 beginning and ending dates of the effective

1 period of the declaration, and may subse-
2 quently amend such declaration to shorten
3 or extend such effective period, provided
4 that the new closing date is after the date
5 when the declaration is amended.

6 “(iv) PUBLICATION.—The Secretary
7 shall promptly publish each such declara-
8 tion and amendment in the Federal Reg-
9 ister.

10 “(B) LIABILITY OF UNITED STATES ONLY
11 FOR ADMINISTRATIONS WITHIN SCOPE OF DEC-
12 LARATION.—Except as provided in paragraph
13 (5)(B)(ii), the United States shall be liable
14 under this subsection with respect to a claim
15 arising out of the administration of a covered
16 countermeasure to an individual only if—

17 “(i) the countermeasure was adminis-
18 tered by a qualified person, for a purpose
19 stated in paragraph (7)(A)(i), and during
20 the effective period of a declaration by the
21 Secretary under subparagraph (A) with re-
22 spect to such countermeasure; and

23 “(ii)(I) the individual was within a
24 category of individuals covered by the dec-
25 laration; or

1 “(II) the qualified person admin-
2 istering the countermeasure had reasonable
3 grounds to believe that such individual was
4 within such category.

5 “(C) PRESUMPTION OF ADMINISTRATION
6 WITHIN SCOPE OF DECLARATION IN CASE OF
7 ACCIDENTAL VACCINIA INOCULATION.—

8 “(i) IN GENERAL.—If vaccinia vaccine
9 is a covered countermeasure specified in a
10 declaration under subparagraph (A), and
11 an individual to whom the vaccinia vaccine
12 is not administered contracts vaccinia,
13 then, under the circumstances specified in
14 clause (ii), the individual—

15 “(I) shall be rebuttably presumed
16 to have contracted vaccinia from an
17 individual to whom such vaccine was
18 administered as provided by clauses
19 (i) and (ii) of subparagraph (B); and

20 “(II) shall (unless such presump-
21 tion is rebutted) be deemed for pur-
22 poses of this subsection to be an indi-
23 vidual to whom a covered counter-
24 measure was administered by a quali-
25 fied person in accordance with the

1 terms of such declaration and as de-
2 scribed by subparagraph (B).

3 “(ii) CIRCUMSTANCES IN WHICH PRE-
4 SUMPTION APPLIES.—The presumption
5 and deeming stated in clause (i) shall
6 apply if—

7 “(I) the individual contracts
8 vaccinia during the effective period of
9 a declaration under subparagraph (A)
10 or by the date 30 days after the close
11 of such period; or

12 “(II) the individual resides or has
13 resided with an individual to whom
14 such vaccine was administered as pro-
15 vided by clauses (i) and (ii) of sub-
16 paragraph (B) and contracts vaccinia
17 after such date.

18 “(3) EXCLUSIVITY OF REMEDY.—The remedy
19 provided by subsection (a) shall be exclusive of any
20 other civil action or proceeding for any claim or suit
21 this subsection encompasses.

22 “(4) CERTIFICATION OF ACTION BY ATTORNEY
23 GENERAL.—Subsection (c) applies to actions under
24 this subsection, subject to the following provisions:

1 “(A) NATURE OF CERTIFICATION.—The
2 certification by the Attorney General that is the
3 basis for deeming an action or proceeding to be
4 against the United States, and for removing an
5 action or proceeding from a State court, is a
6 certification that the action or proceeding is
7 against a covered person and is based upon a
8 claim alleging personal injury or death arising
9 out of the administration of a covered counter-
10 measure.

11 “(B) CERTIFICATION OF ATTORNEY GEN-
12 ERAL CONCLUSIVE.—The certification of the
13 Attorney General of the facts specified in sub-
14 paragraph (A) shall conclusively establish such
15 facts for purposes of jurisdiction pursuant to
16 this subsection.

17 “(5) DEFENDANT TO COOPERATE WITH UNITED
18 STATES.—

19 “(A) IN GENERAL.—A covered person shall
20 cooperate with the United States in the proc-
21 essing and defense of a claim or action under
22 this subsection based upon alleged acts or omis-
23 sions of such person.

24 “(B) CONSEQUENCES OF FAILURE TO CO-
25 OPERATE.—Upon the motion of the United

1 States or any other party and upon finding that
2 such person has failed to so cooperate—

3 “(i) the court shall substitute such
4 person as the party defendant in place of
5 the United States and, upon motion, shall
6 remand any such suit to the court in which
7 it was instituted if it appears that the
8 court lacks subject matter jurisdiction;

9 “(ii) the United States shall not be
10 liable based on the acts or omissions of
11 such person; and

12 “(iii) the Attorney General shall not
13 be obligated to defend such action.

14 “(6) RECOURSE AGAINST COVERED PERSON IN
15 CASE OF GROSS MISCONDUCT OR CONTRACT VIOLA-
16 TION.—

17 “(A) IN GENERAL.—Should payment be
18 made by the United States to any claimant
19 bringing a claim under this subsection, either
20 by way of administrative determination, settle-
21 ment, or court judgment, the United States
22 shall have, notwithstanding any provision of
23 State law, the right to recover for that portion
24 of the damages so awarded or paid, as well as
25 interest and any costs of litigation, resulting

1 from the failure of any covered person to carry
2 out any obligation or responsibility assumed by
3 such person under a contract with the United
4 States or from any grossly negligent, reckless,
5 or illegal conduct or willful misconduct on the
6 part of such person.

7 “(B) VENUE.—The United States may
8 maintain an action under this paragraph
9 against such person in the district court of the
10 United States in which such person resides or
11 has its principal place of business.

12 “(7) DEFINITIONS.—As used in this subsection,
13 terms have the following meanings:

14 “(A) COVERED COUNTERMEASURE.—The
15 term ‘covered countermeasure’, or ‘covered
16 countermeasure against smallpox’, means a sub-
17 stance that is—

18 “(i)(I) used to prevent or treat small-
19 pox (including the vaccinia or another vac-
20 cine); or

21 “(II) vaccinia immune globulin used
22 to control or treat the adverse effects of
23 vaccinia inoculation; and

24 “(ii) specified in a declaration under
25 paragraph (2).

1 “(B) COVERED PERSON.—The term ‘cov-
2 ered person’, when used with respect to the ad-
3 ministration of a covered countermeasure, in-
4 cludes any person who is—

5 “(i) a manufacturer or distributor of
6 such countermeasure;

7 “(ii) a health care entity under whose
8 auspices such countermeasure was admin-
9 istered;

10 “(iii) a qualified person who adminis-
11 tered such countermeasure; or

12 “(iv) an official, agent, or employee of
13 a person described in clause (i), (ii), or
14 (iii).

15 “(C) QUALIFIED PERSON.—The term
16 ‘qualified person’, when used with respect to the
17 administration of a covered countermeasure,
18 means a licensed health professional or other
19 individual who is authorized to administer such
20 countermeasure under the law of the State in
21 which the countermeasure was administered.”.

22 **SEC. 305. FEDERALLY FUNDED RESEARCH AND DEVELOP-**
23 **MENT CENTERS.**

24 The Secretary, acting through the Under Secretary
25 for Science and Technology, shall have the authority to

1 establish or contract with 1 or more federally funded re-
2 search and development centers to provide independent
3 analysis of homeland security issues, or to carry out other
4 responsibilities under this Act, including coordinating and
5 integrating both the extramural and intramural programs
6 described in section 308.

7 **SEC. 306. MISCELLANEOUS PROVISIONS.**

8 (a) CLASSIFICATION.—To the greatest extent prac-
9 ticable, research conducted or supported by the Depart-
10 ment shall be unclassified.

11 (b) CONSTRUCTION.—Nothing in this title shall be
12 construed to preclude any Under Secretary of the Depart-
13 ment from carrying out research, development, demonstra-
14 tion, or deployment activities, as long as such activities
15 are coordinated through the Under Secretary for Science
16 and Technology.

17 (c) REGULATIONS.—The Secretary, acting through
18 the Under Secretary for Science and Technology, may
19 issue necessary regulations with respect to research, devel-
20 opment, demonstration, testing, and evaluation activities
21 of the Department, including the conducting, funding, and
22 reviewing of such activities.

23 (d) NOTIFICATION OF PRESIDENTIAL LIFE
24 SCIENCES DESIGNATIONS.—Not later than 60 days before
25 effecting any transfer of Department of Energy life

1 sciences activities pursuant to section 303(1)(D) of this
2 Act, the President shall notify the appropriate congres-
3 sional committees of the proposed transfer and shall in-
4 clude the reasons for the transfer and a description of the
5 effect of the transfer on the activities of the Department
6 of Energy.

7 **SEC. 307. HOMELAND SECURITY ADVANCED RESEARCH**
8 **PROJECTS AGENCY.**

9 (a) DEFINITIONS.—In this section:

10 (1) FUND.—The term “Fund” means the Ac-
11 celeration Fund for Research and Development of
12 Homeland Security Technologies established in sub-
13 section (c).

14 (2) HOMELAND SECURITY RESEARCH.—The
15 term “homeland security research” means research
16 relevant to the detection of, prevention of, protection
17 against, response to, attribution of, and recovery
18 from homeland security threats, particularly acts of
19 terrorism.

20 (3) HSARPA.—The term “HSARPA” means the
21 Homeland Security Advanced Research Projects
22 Agency established in subsection (b).

23 (4) UNDER SECRETARY.—The term “Under
24 Secretary” means the Under Secretary for Science
25 and Technology.

1 (b) HSARPA.—

2 (1) ESTABLISHMENT.—There is established the
3 Homeland Security Advanced Research Projects
4 Agency.

5 (2) DIRECTOR.—HSARPA shall be headed by a
6 Director, who shall be appointed by the Secretary.
7 The Director shall report to the Under Secretary.

8 (3) RESPONSIBILITIES.—The Director shall ad-
9 minister the Fund to award competitive, merit-re-
10 viewed grants, cooperative agreements or contracts
11 to public or private entities, including businesses,
12 federally funded research and development centers,
13 and universities. The Director shall administer the
14 Fund to—

15 (A) support basic and applied homeland
16 security research to promote revolutionary
17 changes in technologies that would promote
18 homeland security;

19 (B) advance the development, testing and
20 evaluation, and deployment of critical homeland
21 security technologies; and

22 (C) accelerate the prototyping and deploy-
23 ment of technologies that would address home-
24 land security vulnerabilities.

1 (4) TARGETED COMPETITIONS.—The Director
2 may solicit proposals to address specific
3 vulnerabilities identified by the Director.

4 (5) COORDINATION.—The Director shall ensure
5 that the activities of HSARPA are coordinated with
6 those of other relevant research agencies, and may
7 run projects jointly with other agencies.

8 (6) PERSONNEL.—In hiring personnel for
9 HSARPA, the Secretary shall have the hiring and
10 management authorities described in section 1101 of
11 the Strom Thurmond National Defense Authoriza-
12 tion Act for Fiscal Year 1999 (5 U.S.C. 3104 note;
13 Public Law 105–261). The term of appointments for
14 employees under subsection (c)(1) of that section
15 may not exceed 5 years before the granting of any
16 extension under subsection (c)(2) of that section.

17 (7) DEMONSTRATIONS.—The Director, periodi-
18 cally, shall hold homeland security technology dem-
19 onstrations to improve contact among technology de-
20 velopers, vendors and acquisition personnel.

21 (c) FUND.—

22 (1) ESTABLISHMENT.—There is established the
23 Acceleration Fund for Research and Development of
24 Homeland Security Technologies, which shall be ad-
25 ministered by the Director of HSARPA.

1 (1) IN GENERAL.—The Secretary, acting
2 through the Under Secretary for Science and Tech-
3 nology, shall operate extramural research, develop-
4 ment, demonstration, testing, and evaluation pro-
5 grams so as to—

6 (A) ensure that colleges, universities, pri-
7 vate research institutes, and companies (and
8 consortia thereof) from as many areas of the
9 United States as practicable participate;

10 (B) ensure that the research funded is of
11 high quality, as determined through merit re-
12 view processes developed under section 302(14);
13 and

14 (C) distribute funds through grants, coop-
15 erative agreements, and contracts.

16 (2) UNIVERSITY-BASED CENTERS FOR HOME-
17 LAND SECURITY.—

18 (A) ESTABLISHMENT.—The Secretary, act-
19 ing through the Under Secretary for Science
20 and Technology, shall establish within 1 year of
21 the date of enactment of this Act a university-
22 based center or centers for homeland security.
23 The purpose of this center or centers shall be
24 to establish a coordinated, university-based sys-
25 tem to enhance the Nation’s homeland security.

1 (B) CRITERIA FOR SELECTION.—In select-
2 ing colleges or universities as centers for home-
3 land security, the Secretary shall consider the
4 following criteria:

5 (i) Demonstrated expertise in the
6 training of first responders.

7 (ii) Demonstrated expertise in re-
8 sponding to incidents involving weapons of
9 mass destruction and biological warfare.

10 (iii) Demonstrated expertise in emer-
11 gency medical services.

12 (iv) Demonstrated expertise in chem-
13 ical, biological, radiological, and nuclear
14 countermeasures.

15 (v) Strong affiliations with animal and
16 plant diagnostic laboratories.

17 (vi) Demonstrated expertise in food
18 safety.

19 (vii) Affiliation with Department of
20 Agriculture laboratories or training cen-
21 ters.

22 (viii) Demonstrated expertise in water
23 and wastewater operations.

24 (ix) Demonstrated expertise in port
25 and waterway security.

1 (x) Demonstrated expertise in multi-
2 modal transportation.

3 (xi) Nationally recognized programs in
4 information security.

5 (xii) Nationally recognized programs
6 in engineering.

7 (xiii) Demonstrated expertise in edu-
8 cational outreach and technical assistance.

9 (xiv) Demonstrated expertise in bor-
10 der transportation and security.

11 (xv) Demonstrated expertise in inter-
12 disciplinary public policy research and
13 communication outreach regarding science,
14 technology, and public policy.

15 (C) DISCRETION OF SECRETARY.—The
16 Secretary shall have the discretion to establish
17 such centers and to consider additional criteria
18 as necessary to meet the evolving needs of
19 homeland security and shall report to Congress
20 concerning the implementation of this para-
21 graph as necessary.

22 (D) AUTHORIZATION OF APPROPRIA-
23 TIONS.—There are authorized to be appro-
24 priated such sums as may be necessary to carry
25 out this paragraph.

1 (c) INTRAMURAL PROGRAMS.—

2 (1) CONSULTATION.—In carrying out the duties
3 under section 302, the Secretary, acting through the
4 Under Secretary for Science and Technology, may
5 draw upon the expertise of any laboratory of the
6 Federal Government, whether operated by a con-
7 tractor or the Government.

8 (2) LABORATORIES.—The Secretary, acting
9 through the Under Secretary for Science and Tech-
10 nology, may establish a headquarters laboratory for
11 the Department at any laboratory or site and may
12 establish additional laboratory units at other labora-
13 tories or sites.

14 (3) CRITERIA FOR HEADQUARTERS LABORA-
15 TORY.—If the Secretary chooses to establish a head-
16 quarters laboratory pursuant to paragraph (2), then
17 the Secretary shall do the following:

18 (A) Establish criteria for the selection of
19 the headquarters laboratory in consultation
20 with the National Academy of Sciences, appro-
21 priate Federal agencies, and other experts.

22 (B) Publish the criteria in the Federal
23 Register.

24 (C) Evaluate all appropriate laboratories
25 or sites against the criteria.

1 (D) Select a laboratory or site on the basis
2 of the criteria.

3 (E) Report to the appropriate congress-
4 sional committees on which laboratory was se-
5 lected, how the selected laboratory meets the
6 published criteria, and what duties the head-
7 quarters laboratory shall perform.

8 (4) LIMITATION ON OPERATION OF LABORA-
9 TORIES.—No laboratory shall begin operating as the
10 headquarters laboratory of the Department until at
11 least 30 days after the transmittal of the report re-
12 quired by paragraph (3)(E).

13 **SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NA-**
14 **TIONAL LABORATORIES AND SITES IN SUP-**
15 **PORT OF HOMELAND SECURITY ACTIVITIES.**

16 (a) AUTHORITY TO UTILIZE NATIONAL LABORA-
17 TORIES AND SITES.—

18 (1) IN GENERAL.—In carrying out the missions
19 of the Department, the Secretary may utilize the
20 Department of Energy national laboratories and
21 sites through any 1 or more of the following meth-
22 ods, as the Secretary considers appropriate:

23 (A) A joint sponsorship arrangement re-
24 ferred to in subsection (b).

1 (B) A direct contract between the Depart-
2 ment and the applicable Department of Energy
3 laboratory or site, subject to subsection (c).

4 (C) Any “work for others” basis made
5 available by that laboratory or site.

6 (D) Any other method provided by law.

7 (2) ACCEPTANCE AND PERFORMANCE BY LABS
8 AND SITES.—Notwithstanding any other law gov-
9 erning the administration, mission, use, or oper-
10 ations of any of the Department of Energy national
11 laboratories and sites, such laboratories and sites
12 are authorized to accept and perform work for the
13 Secretary, consistent with resources provided, and
14 perform such work on an equal basis to other mis-
15 sions at the laboratory and not on a noninterference
16 basis with other missions of such laboratory or site.

17 (b) JOINT SPONSORSHIP ARRANGEMENTS.—

18 (1) LABORATORIES.—The Department may be
19 a joint sponsor, under a multiple agency sponsorship
20 arrangement with the Department of Energy, of 1
21 or more Department of Energy national laboratories
22 in the performance of work.

23 (2) SITES.—The Department may be a joint
24 sponsor of a Department of Energy site in the per-
25 formance of work as if such site were a federally

1 funded research and development center and the
2 work were performed under a multiple agency sponsor-
3 ship arrangement with the Department.

4 (3) PRIMARY SPONSOR.—The Department of
5 Energy shall be the primary sponsor under a mul-
6 tiple agency sponsorship arrangement referred to in
7 paragraph (1) or (2).

8 (4) LEAD AGENT.—The Secretary of Energy
9 shall act as the lead agent in coordinating the for-
10 mation and performance of a joint sponsorship ar-
11 rangement under this subsection between the De-
12 partment and a Department of Energy national lab-
13 oratory or site.

14 (5) FEDERAL ACQUISITION REGULATION.—Any
15 work performed by a Department of Energy national
16 laboratory or site under a joint sponsorship arrange-
17 ment under this subsection shall comply with the
18 policy on the use of federally funded research and
19 development centers under the Federal Acquisition
20 Regulations.

21 (6) FUNDING.—The Department shall provide
22 funds for work at the Department of Energy na-
23 tional laboratories or sites, as the case may be,
24 under a joint sponsorship arrangement under this
25 subsection under the same terms and conditions as

1 apply to the primary sponsor of such national lab-
2 oratory under section 303(b)(1)(C) of the Federal
3 Property and Administrative Services Act of 1949
4 (41 U.S.C. 253 (b)(1)(C)) or of such site to the ex-
5 tent such section applies to such site as a federally
6 funded research and development center by reason
7 of this subsection.

8 (c) SEPARATE CONTRACTING.—To the extent that
9 programs or activities transferred by this Act from the De-
10 partment of Energy to the Department of Homeland Se-
11 curity are being carried out through direct contracts with
12 the operator of a national laboratory or site of the Depart-
13 ment of Energy, the Secretary of Homeland Security and
14 the Secretary of Energy shall ensure that direct contracts
15 for such programs and activities between the Department
16 of Homeland Security and such operator are separate
17 from the direct contracts of the Department of Energy
18 with such operator.

19 (d) AUTHORITY WITH RESPECT TO COOPERATIVE
20 RESEARCH AND DEVELOPMENT AGREEMENTS AND LI-
21 CENSING AGREEMENTS.—In connection with any utiliza-
22 tion of the Department of Energy national laboratories
23 and sites under this section, the Secretary may permit the
24 director of any such national laboratory or site to enter
25 into cooperative research and development agreements or

1 to negotiate licensing agreements with any person, any
2 agency or instrumentality, of the United States, any unit
3 of State or local government, and any other entity under
4 the authority granted by section 12 of the Stevenson-
5 Wydler Technology Innovation Act of 1980 (15 U.S.C.
6 3710a). Technology may be transferred to a non-Federal
7 party to such an agreement consistent with the provisions
8 of sections 11 and 12 of that Act (15 U.S.C. 3710,
9 3710a).

10 (e) REIMBURSEMENT OF COSTS.—In the case of an
11 activity carried out by the operator of a Department of
12 Energy national laboratory or site in connection with any
13 utilization of such laboratory or site under this section,
14 the Department of Homeland Security shall reimburse the
15 Department of Energy for costs of such activity through
16 a method under which the Secretary of Energy waives any
17 requirement for the Department of Homeland Security to
18 pay administrative charges or personnel costs of the De-
19 partment of Energy or its contractors in excess of the
20 amount that the Secretary of Energy pays for an activity
21 carried out by such contractor and paid for by the Depart-
22 ment of Energy.

23 (f) LABORATORY DIRECTED RESEARCH AND DEVEL-
24 OPMENT BY THE DEPARTMENT OF ENERGY.—No funds
25 authorized to be appropriated or otherwise made available

1 to the Department in any fiscal year may be obligated or
2 expended for laboratory directed research and develop-
3 ment activities carried out by the Department of Energy
4 unless such activities support the missions of the Depart-
5 ment of Homeland Security.

6 (g) OFFICE FOR NATIONAL LABORATORIES.—There
7 is established within the Directorate of Science and Tech-
8 nology an Office for National Laboratories, which shall be
9 responsible for the coordination and utilization of the De-
10 partment of Energy national laboratories and sites under
11 this section in a manner to create a networked laboratory
12 system for the purpose of supporting the missions of the
13 Department.

14 (h) DEPARTMENT OF ENERGY COORDINATION ON
15 HOMELAND SECURITY RELATED RESEARCH.—The Sec-
16 retary of Energy shall ensure that any research, develop-
17 ment, test, and evaluation activities conducted within the
18 Department of Energy that are directly or indirectly re-
19 lated to homeland security are fully coordinated with the
20 Secretary to minimize duplication of effort and maximize
21 the effective application of Federal budget resources.

22 **SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE**
23 **CENTER, DEPARTMENT OF AGRICULTURE.**

24 (a) IN GENERAL.—In accordance with title XV, the
25 Secretary of Agriculture shall transfer to the Secretary of

1 Homeland Security the Plum Island Animal Disease Cen-
2 ter of the Department of Agriculture, including the assets
3 and liabilities of the Center.

4 (b) CONTINUED DEPARTMENT OF AGRICULTURE AC-
5 CESS.—On completion of the transfer of the Plum Island
6 Animal Disease Center under subsection (a), the Secretary
7 of Homeland Security and the Secretary of Agriculture
8 shall enter into an agreement to ensure that the Depart-
9 ment of Agriculture is able to carry out research, diag-
10 nostic, and other activities of the Department of Agri-
11 culture at the Center.

12 (c) DIRECTION OF ACTIVITIES.—The Secretary of
13 Agriculture shall continue to direct the research, diag-
14 nostic, and other activities of the Department of Agri-
15 culture at the Center described in subsection (b).

16 (d) NOTIFICATION.—

17 (1) IN GENERAL.—At least 180 days before any
18 change in the biosafety level at the Plum Island Ani-
19 mal Disease Center, the President shall notify Con-
20 gress of the change and describe the reasons for the
21 change.

22 (2) LIMITATION.—No change described in para-
23 graph (1) may be made earlier than 180 days after
24 the completion of the transition period (as defined in
25 section 1501).

1 **SEC. 311. HOMELAND SECURITY SCIENCE AND TECH-**
2 **NOLOGY ADVISORY COMMITTEE.**

3 (a) ESTABLISHMENT.—There is established within
4 the Department a Homeland Security Science and Tech-
5 nology Advisory Committee (in this section referred to as
6 the “Advisory Committee”). The Advisory Committee
7 shall make recommendations with respect to the activities
8 of the Under Secretary for Science and Technology, in-
9 cluding identifying research areas of potential importance
10 to the security of the Nation.

11 (b) MEMBERSHIP.—

12 (1) APPOINTMENT.—The Advisory Committee
13 shall consist of 20 members appointed by the Under
14 Secretary for Science and Technology, which shall
15 include emergency first-responders or representatives
16 of organizations or associations of emergency first-
17 responders. The Advisory Committee shall also in-
18 clude representatives of citizen groups, including
19 economically disadvantaged communities. The indi-
20 viduals appointed as members of the Advisory
21 Committee—

22 (A) shall be eminent in fields such as
23 emergency response, research, engineering, new
24 product development, business, and manage-
25 ment consulting;

1 (B) shall be selected solely on the basis of
2 established records of distinguished service;

3 (C) shall not be employees of the Federal
4 Government; and

5 (D) shall be so selected as to provide rep-
6 resentation of a cross-section of the research,
7 development, demonstration, and deployment
8 activities supported by the Under Secretary for
9 Science and Technology.

10 (2) NATIONAL RESEARCH COUNCIL.—The
11 Under Secretary for Science and Technology may
12 enter into an arrangement for the National Research
13 Council to select members of the Advisory Com-
14 mittee, but only if the panel used by the National
15 Research Council reflects the representation de-
16 scribed in paragraph (1).

17 (c) TERMS OF OFFICE.—

18 (1) IN GENERAL.—Except as otherwise pro-
19 vided in this subsection, the term of office of each
20 member of the Advisory Committee shall be 3 years.

21 (2) ORIGINAL APPOINTMENTS.—The original
22 members of the Advisory Committee shall be ap-
23 pointed to three classes of three members each. One
24 class shall have a term of 1 year, 1 a term of 2
25 years, and the other a term of 3 years.

1 (3) VACANCIES.—A member appointed to fill a
2 vacancy occurring before the expiration of the term
3 for which the member’s predecessor was appointed
4 shall be appointed for the remainder of such term.

5 (d) ELIGIBILITY.—A person who has completed two
6 consecutive full terms of service on the Advisory Com-
7 mittee shall thereafter be ineligible for appointment during
8 the 1-year period following the expiration of the second
9 such term.

10 (e) MEETINGS.—The Advisory Committee shall meet
11 at least quarterly at the call of the Chair or whenever one-
12 third of the members so request in writing. Each member
13 shall be given appropriate notice of the call of each meet-
14 ing, whenever possible not less than 15 days before the
15 meeting.

16 (f) QUORUM.—A majority of the members of the Ad-
17 visory Committee not having a conflict of interest in the
18 matter being considered by the Advisory Committee shall
19 constitute a quorum.

20 (g) CONFLICT OF INTEREST RULES.—The Advisory
21 Committee shall establish rules for determining when 1
22 of its members has a conflict of interest in a matter being
23 considered by the Advisory Committee.

24 (h) REPORTS.—

1 (1) ANNUAL REPORT.—The Advisory Com-
2 mittee shall render an annual report to the Under
3 Secretary for Science and Technology for transmittal
4 to Congress on or before January 31 of each year.
5 Such report shall describe the activities and rec-
6 ommendations of the Advisory Committee during the
7 previous year.

8 (2) ADDITIONAL REPORTS.—The Advisory
9 Committee may render to the Under Secretary for
10 transmittal to Congress such additional reports on
11 specific policy matters as it considers appropriate.

12 (i) FACA EXEMPTION.—Section 14 of the Federal
13 Advisory Committee Act shall not apply to the Advisory
14 Committee.

15 (j) TERMINATION.—The Department of Homeland
16 Security Science and Technology Advisory Committee
17 shall terminate 3 years after the effective date of this Act.

18 **SEC. 312. HOMELAND SECURITY INSTITUTE.**

19 (a) ESTABLISHMENT.—The Secretary shall establish
20 a federally funded research and development center to be
21 known as the “Homeland Security Institute” (in this sec-
22 tion referred to as the “Institute”).

23 (b) ADMINISTRATION.—The Institute shall be admin-
24 istered as a separate entity by the Secretary.

1 (c) DUTIES.—The duties of the Institute shall be de-
2 termined by the Secretary, and may include the following:

3 (1) Systems analysis, risk analysis, and simula-
4 tion and modeling to determine the vulnerabilities of
5 the Nation’s critical infrastructures and the effec-
6 tiveness of the systems deployed to reduce those
7 vulnerabilities.

8 (2) Economic and policy analysis to assess the
9 distributed costs and benefits of alternative ap-
10 proaches to enhancing security.

11 (3) Evaluation of the effectiveness of measures
12 deployed to enhance the security of institutions, fa-
13 cilities, and infrastructure that may be terrorist tar-
14 gets.

15 (4) Identification of instances when common
16 standards and protocols could improve the interoper-
17 ability and effective utilization of tools developed for
18 field operators and first responders.

19 (5) Assistance for Federal agencies and depart-
20 ments in establishing testbeds to evaluate the effec-
21 tiveness of technologies under development and to
22 assess the appropriateness of such technologies for
23 deployment.

24 (6) Design of metrics and use of those metrics
25 to evaluate the effectiveness of homeland security

1 programs throughout the Federal Government, in-
2 cluding all national laboratories.

3 (7) Design of and support for the conduct of
4 homeland security-related exercises and simulations.

5 (8) Creation of strategic technology develop-
6 ment plans to reduce vulnerabilities in the Nation's
7 critical infrastructure and key resources.

8 (d) CONSULTATION ON INSTITUTE ACTIVITIES.—In
9 carrying out the duties described in subsection (c), the In-
10 stitute shall consult widely with representatives from pri-
11 vate industry, institutions of higher education, nonprofit
12 institutions, other Government agencies, and federally
13 funded research and development centers.

14 (e) USE OF CENTERS.—The Institute shall utilize the
15 capabilities of the National Infrastructure Simulation and
16 Analysis Center.

17 (f) ANNUAL REPORTS.—The Institute shall transmit
18 to the Secretary and Congress an annual report on the
19 activities of the Institute under this section.

20 (g) TERMINATION.—The Homeland Security Insti-
21 tute shall terminate 3 years after the effective date of this
22 Act.

1 **SEC. 313. TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE**
2 **AND SUPPORT INNOVATIVE SOLUTIONS TO**
3 **ENHANCE HOMELAND SECURITY.**

4 (a) ESTABLISHMENT OF PROGRAM.—The Secretary,
5 acting through the Under Secretary for Science and Tech-
6 nology, shall establish and promote a program to encour-
7 age technological innovation in facilitating the mission of
8 the Department (as described in section 101).

9 (b) ELEMENTS OF PROGRAM.—The program de-
10 scribed in subsection (a) shall include the following compo-
11 nents:

12 (1) The establishment of a centralized Federal
13 clearinghouse for information relating to tech-
14 nologies that would further the mission of the De-
15 partment for dissemination, as appropriate, to Fed-
16 eral, State, and local government and private sector
17 entities for additional review, purchase, or use.

18 (2) The issuance of announcements seeking
19 unique and innovative technologies to advance the
20 mission of the Department.

21 (3) The establishment of a technical assistance
22 team to assist in screening, as appropriate, pro-
23 posals submitted to the Secretary (except as pro-
24 vided in subsection (c)(2)) to assess the feasibility,
25 scientific and technical merits, and estimated cost of
26 such proposals, as appropriate.

1 (4) The provision of guidance, recommenda-
2 tions, and technical assistance, as appropriate, to as-
3 sist Federal, State, and local government and pri-
4 vate sector efforts to evaluate and implement the use
5 of technologies described in paragraph (1) or (2).

6 (5) The provision of information for persons
7 seeking guidance on how to pursue proposals to de-
8 velop or deploy technologies that would enhance
9 homeland security, including information relating to
10 Federal funding, regulation, or acquisition.

11 (c) MISCELLANEOUS PROVISIONS.—

12 (1) IN GENERAL.—Nothing in this section shall
13 be construed as authorizing the Secretary or the
14 technical assistance team established under sub-
15 section (b)(3) to set standards for technology to be
16 used by the Department, any other executive agency,
17 any State or local government entity, or any private
18 sector entity.

19 (2) CERTAIN PROPOSALS.—The technical as-
20 sistance team established under subsection (b)(3)
21 shall not consider or evaluate proposals submitted in
22 response to a solicitation for offers for a pending
23 procurement or for a specific agency requirement.

24 (3) COORDINATION.—In carrying out this sec-
25 tion, the Secretary shall coordinate with the Tech-

1 nical Support Working Group (organized under the
2 April 1982 National Security Decision Directive
3 Numbered 30).

4 **TITLE IV—DIRECTORATE OF**
5 **BORDER AND TRANSPORTATION SECURITY**

6 **Subtitle A—Under Secretary for**
7 **Border and Transportation Security**

8 **SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.**

9 There shall be in the Department a Directorate of
10 Border and Transportation Security headed by an Under
11 Secretary for Border and Transportation Security.

12 **SEC. 402. RESPONSIBILITIES.**

13 The Secretary, acting through the Under Secretary
14 for Border and Transportation Security, shall be responsible for the following:

15 (1) Preventing the entry of terrorists and the
16 instruments of terrorism into the United States.

17 (2) Securing the borders, territorial waters,
18 ports, terminals, waterways, and air, land, and sea
19 transportation systems of the United States, including
20 managing and coordinating those functions
21 transferred to the Department at ports of entry.
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1 (3) Carrying out the immigration enforcement
2 functions vested by statute in, or performed by, the
3 Commissioner of Immigration and Naturalization (or
4 any officer, employee, or component of the Immigra-
5 tion and Naturalization Service) immediately before
6 the date on which the transfer of functions specified
7 under section 441 takes effect.

8 (4) Establishing and administering rules, in ac-
9 cordance with section 428, governing the granting of
10 visas or other forms of permission, including parole,
11 to enter the United States to individuals who are not
12 a citizen or an alien lawfully admitted for permanent
13 residence in the United States.

14 (5) Establishing national immigration enforce-
15 ment policies and priorities.

16 (6) Except as provided in subtitle C, admin-
17 istering the customs laws of the United States.

18 (7) Conducting the inspection and related ad-
19 ministrative functions of the Department of Agri-
20 culture transferred to the Secretary of Homeland
21 Security under section 421.

22 (8) In carrying out the foregoing responsibil-
23 ities, ensuring the speedy, orderly, and efficient flow
24 of lawful traffic and commerce.

1 **SEC. 403. FUNCTIONS TRANSFERRED.**

2 In accordance with title XV (relating to transition
3 provisions), there shall be transferred to the Secretary the
4 functions, personnel, assets, and liabilities of—

5 (1) the United States Customs Service of the
6 Department of the Treasury, including the functions
7 of the Secretary of the Treasury relating thereto;

8 (2) the Transportation Security Administration
9 of the Department of Transportation, including the
10 functions of the Secretary of Transportation, and of
11 the Under Secretary of Transportation for Security,
12 relating thereto;

13 (3) the Federal Protective Service of the Gen-
14 eral Services Administration, including the functions
15 of the Administrator of General Services relating
16 thereto;

17 (4) the Federal Law Enforcement Training
18 Center of the Department of the Treasury; and

19 (5) the Office for Domestic Preparedness of the
20 Office of Justice Programs, including the functions
21 of the Attorney General relating thereto.

22 **Subtitle B—United States Customs**
23 **Service**

24 **SEC. 411. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.**

25 (a) ESTABLISHMENT.—There is established in the
26 Department the United States Customs Service, under the

1 authority of the Under Secretary for Border and Trans-
2 portation Security, which shall be vested with those func-
3 tions including, but not limited to those set forth in section
4 415(7), and the personnel, assets, and liabilities attrib-
5 utable to those functions.

6 (b) COMMISSIONER OF CUSTOMS.—

7 (1) IN GENERAL.—There shall be at the head
8 of the Customs Service a Commissioner of Customs,
9 who shall be appointed by the President, by and
10 with the advice and consent of the Senate.

11 (2) COMPENSATION.—Section 5314 of title 5,
12 United States Code, is amended by striking

13 “Commissioner of Customs, Department of the
14 Treasury”

15 and inserting

16 “Commissioner of Customs, Department of
17 Homeland Security.”.

18 (3) CONTINUATION IN OFFICE.—The individual
19 serving as the Commissioner of Customs on the day
20 before the effective date of this Act may serve as the
21 Commissioner of Customs on and after such effec-
22 tive date until a Commissioner of Customs is ap-
23 pointed under paragraph (1).

1 **SEC. 412. RETENTION OF CUSTOMS REVENUE FUNCTIONS**
2 **BY SECRETARY OF THE TREASURY.**

3 (a) RETENTION OF CUSTOMS REVENUE FUNCTIONS
4 BY SECRETARY OF THE TREASURY.—

5 (1) RETENTION OF AUTHORITY.—Notwith-
6 standing section 403(a)(1), authority related to Cus-
7 toms revenue functions that was vested in the Sec-
8 retary of the Treasury by law before the effective
9 date of this Act under those provisions of law set
10 forth in paragraph (2) shall not be transferred to
11 the Secretary by reason of this Act, and on and
12 after the effective date of this Act, the Secretary of
13 the Treasury may delegate any such authority to the
14 Secretary at the discretion of the Secretary of the
15 Treasury. The Secretary of the Treasury shall con-
16 sult with the Secretary regarding the exercise of any
17 such authority not delegated to the Secretary.

18 (2) STATUTES.—The provisions of law referred
19 to in paragraph (1) are the following: the Tariff Act
20 of 1930; section 249 of the Revised Statutes of the
21 United States (19 U.S.C. 3); section 2 of the Act of
22 March 4, 1923 (19 U.S.C. 6); section 13031 of the
23 Consolidated Omnibus Budget Reconciliation Act of
24 1985 (19 U.S.C. 58c); section 251 of the Revised
25 Statutes of the United States (19 U.S.C. 66); sec-
26 tion 1 of the Act of June 26, 1930 (19 U.S.C. 68);

1 the Foreign Trade Zones Act (19 U.S.C. 81a et
2 seq.); section 1 of the Act of March 2, 1911 (19
3 U.S.C. 198); the Trade Act of 1974; the Trade
4 Agreements Act of 1979; the North American Free
5 Trade Area Implementation Act; the Uruguay
6 Round Agreements Act; the Caribbean Basin Eco-
7 nomic Recovery Act; the Andean Trade Preference
8 Act; the African Growth and Opportunity Act; and
9 any other provision of law vesting customs revenue
10 functions in the Secretary of the Treasury.

11 (b) MAINTENANCE OF CUSTOMS REVENUE FUNC-
12 TIONS.—

13 (1) MAINTENANCE OF FUNCTIONS.—Notwith-
14 standing any other provision of this Act, the Sec-
15 retary may not consolidate, discontinue, or diminish
16 those functions described in paragraph (2) per-
17 formed by the United States Customs Service (as es-
18 tablished under section 411) on or after the effective
19 date of this Act, reduce the staffing level, or reduce
20 the resources attributable to such functions, and the
21 Secretary shall ensure that an appropriate manage-
22 ment structure is implemented to carry out such
23 functions.

24 (2) FUNCTIONS.—The functions referred to in
25 paragraph (1) are those functions performed by the

1 following personnel, and associated support staff, of
2 the United States Customs Service on the day before
3 the effective date of this Act: Import Specialists,
4 Entry Specialists, Drawback Specialists, National
5 Import Specialist, Fines and Penalties Specialists,
6 attorneys of the Office of Regulations and Rulings,
7 Customs Auditors, International Trade Specialists,
8 Financial Systems Specialists.

9 (c) NEW PERSONNEL.—The Secretary of the Treas-
10 ury is authorized to appoint up to 20 new personnel to
11 work with personnel of the Department in performing cus-
12 toms revenue functions.

13 **SEC. 413. PRESERVATION OF CUSTOMS FUNDS.**

14 Notwithstanding any other provision of this Act, no
15 funds available to the United States Customs Service or
16 collected under paragraphs (1) through (8) of section
17 13031(a) of the Consolidated Omnibus Budget Reconcili-
18 ation Act of 1985 may be transferred for use by any other
19 agency or office in the Department.

20 **SEC. 414. SEPARATE BUDGET REQUEST FOR CUSTOMS.**

21 The President shall include in each budget trans-
22 mitted to Congress under section 1105 of title 31, United
23 States Code, a separate budget request for the United
24 States Customs Service.

1 **SEC. 415. DEFINITION.**

2 In this subtitle, the term “customs revenue function”
3 means the following:

4 (1) Assessing and collecting customs duties (in-
5 cluding antidumping and countervailing duties and
6 duties imposed under safeguard provisions), excise
7 taxes, fees, and penalties due on imported merchan-
8 dise, including classifying and valuing merchandise
9 for purposes of such assessment.

10 (2) Processing and denial of entry of persons,
11 baggage, cargo, and mail, with respect to the assess-
12 ment and collection of import duties.

13 (3) Detecting and apprehending persons en-
14 gaged in fraudulent practices designed to circumvent
15 the customs laws of the United States.

16 (4) Enforcing section 337 of the Tariff Act of
17 1930 and provisions relating to import quotas and
18 the marking of imported merchandise, and providing
19 Customs Recordations for copyrights, patents, and
20 trademarks.

21 (5) Collecting accurate import data for compila-
22 tion of international trade statistics.

23 (6) Enforcing reciprocal trade agreements.

24 (7) Functions performed by the following per-
25 sonnel, and associated support staff, of the United
26 States Customs Service on the day before the effec-

1 tive date of this Act: Import Specialists, Entry Spe-
2 cialists, Drawback Specialists, National Import Spe-
3 cialist, Fines and Penalties Specialists, attorneys of
4 the Office of Regulations and Rulings, Customs
5 Auditors, International Trade Specialists, Financial
6 Systems Specialists.

7 (8) Functions performed by the following of-
8 fices, with respect to any function described in any
9 of paragraphs (1) through (7), and associated sup-
10 port staff, of the United States Customs Service on
11 the day before the effective date of this Act: the Of-
12 fice of Information and Technology, the Office of
13 Laboratory Services, the Office of the Chief Counsel,
14 the Office of Congressional Affairs, the Office of
15 International Affairs, and the Office of Training and
16 Development.

17 **SEC. 416. GAO REPORT TO CONGRESS.**

18 Not later than 3 months after the effective date of
19 this Act, the Comptroller General of the United States
20 shall submit to Congress a report that sets forth all trade
21 functions performed by the executive branch, specifying
22 each agency that performs each such function.

23 **SEC. 417. ALLOCATION OF RESOURCES BY THE SECRETARY.**

24 (a) IN GENERAL.—The Secretary shall ensure that
25 adequate staffing is provided to assure that levels of cus-

1 toms revenue services provided on the day before the effec-
2 tive date of this Act shall continue to be provided.

3 (b) NOTIFICATION OF CONGRESS.—The Secretary
4 shall notify the Committee on Ways and Means of the
5 House of Representatives and the Committee on Finance
6 of the Senate at least 90 days prior to taking any action
7 which would—

8 (1) result in any significant reduction in cus-
9 toms revenue services, including hours of operation,
10 provided at any office within the Department or any
11 port of entry;

12 (2) eliminate or relocate any office of the De-
13 partment which provides customs revenue services;
14 or

15 (3) eliminate any port of entry.

16 (c) DEFINITION.—In this section, the term “customs
17 revenue services” means those customs revenue functions
18 described in paragraphs (1) through (6) and paragraph
19 (8) of section 415.

20 **SEC. 418. REPORTS TO CONGRESS.**

21 (a) CONTINUING REPORTS.—The United States Cus-
22 toms Service shall, on and after the effective date of this
23 Act, continue to submit to the Committee on Ways and
24 Means of the House of Representatives and the Committee
25 on Finance of the Senate any report required, on the day

1 before such the effective date of this Act, to be so sub-
2 mitted under any provision of law.

3 (b) REPORT ON CONFORMING AMENDMENTS.—Not
4 later than 60 days after the date of enactment of this Act,
5 the Secretary of the Treasury shall submit a report to the
6 Committee on Finance of the Senate and the Committee
7 on Ways and Means of the House of Representatives of
8 proposed conforming amendments to the statutes set forth
9 under section 412(a)(2) in order to determine the appro-
10 priate allocation of legal authorities described under this
11 subsection. The Secretary of the Treasury shall also iden-
12 tify those authorities vested in the Secretary of the Treas-
13 ury that are exercised by the Commissioner of Customs
14 on or before the effective date of this section.

15 **SEC. 419. CUSTOMS USER FEES.**

16 (a) IN GENERAL.—Section 13031(f) of the Consoli-
17 dated Omnibus Budget Reconciliation Act of 1985 (19
18 U.S.C. 58c(f)) is amended—

19 (1) in paragraph (1), by striking subparagraph
20 (B) and inserting the following:

21 “(B) amounts deposited into the Customs
22 Commercial and Homeland Security Automa-
23 tion Account under paragraph (5).”;

1 (2) in paragraph (4), by striking “(other than
2 the excess fees determined by the Secretary under
3 paragraph (5))”; and

4 (3) by striking paragraph (5) and inserting the
5 following:

6 “(5)(A) There is created within the general fund of
7 the Treasury a separate account that shall be known as
8 the ‘Customs Commercial and Homeland Security Auto-
9 mation Account’. In each of fiscal years 2003, 2004, and
10 2005 there shall be deposited into the Account from fees
11 collected under subsection (a)(9)(A), \$350,000,000.

12 “(B) There is authorized to be appropriated from the
13 Account in fiscal years 2003 through 2005 such amounts
14 as are available in that Account for the development, es-
15 tablishment, and implementation of the Automated Com-
16 mercial Environment computer system for the processing
17 of merchandise that is entered or released and for other
18 purposes related to the functions of the Department of
19 Homeland Security. Amounts appropriated pursuant to
20 this subparagraph are authorized to remain available until
21 expended.

22 “(C) In adjusting the fee imposed by subsection
23 (a)(9)(A) for fiscal year 2006, the Secretary of the Treas-
24 ury shall reduce the amount estimated to be collected in
25 fiscal year 2006 by the amount by which total fees depos-

1 ited to the Account during fiscal years 2003, 2004, and
2 2005 exceed total appropriations from that Account.”.

3 (b) CONFORMING AMENDMENT.—Section 311(b) of
4 the Customs Border Security Act of 2002 (Public Law
5 107–210) is amended by striking paragraph (2).

6 **Subtitle C—Miscellaneous**
7 **Provisions**

8 **SEC. 421. TRANSFER OF CERTAIN AGRICULTURAL INSPEC-**
9 **TION FUNCTIONS OF THE DEPARTMENT OF**
10 **AGRICULTURE.**

11 (a) TRANSFER OF AGRICULTURAL IMPORT AND
12 ENTRY INSPECTION FUNCTIONS.—There shall be trans-
13 ferred to the Secretary the functions of the Secretary of
14 Agriculture relating to agricultural import and entry in-
15 spection activities under the laws specified in subsection
16 (b).

17 (b) COVERED ANIMAL AND PLANT PROTECTION
18 LAWS.—The laws referred to in subsection (a) are the fol-
19 lowing:

20 (1) The Act commonly known as the Virus-
21 Serum-Toxin Act (the eighth paragraph under the
22 heading “Bureau of Animal Industry” in the Act of
23 March 4, 1913; 21 U.S.C. 151 et seq.).

1 (2) Section 1 of the Act of August 31, 1922
2 (commonly known as the Honeybee Act; 7 U.S.C.
3 281).

4 (3) Title III of the Federal Seed Act (7 U.S.C.
5 1581 et seq.).

6 (4) The Plant Protection Act (7 U.S.C. 7701 et
7 seq.).

8 (5) The Animal Health Protection Act (subtitle
9 E of title X of Public Law 107–171; 7 U.S.C. 8301
10 et seq.).

11 (6) The Lacey Act Amendments of 1981 (16
12 U.S.C. 3371 et seq.).

13 (7) Section 11 of the Endangered Species Act
14 of 1973 (16 U.S.C. 1540).

15 (c) EXCLUSION OF QUARANTINE ACTIVITIES.—For
16 purposes of this section, the term “functions” does not
17 include any quarantine activities carried out under the
18 laws specified in subsection (b).

19 (d) EFFECT OF TRANSFER.—

20 (1) COMPLIANCE WITH DEPARTMENT OF AGRI-
21 CULTURE REGULATIONS.—The authority transferred
22 pursuant to subsection (a) shall be exercised by the
23 Secretary in accordance with the regulations, poli-
24 cies, and procedures issued by the Secretary of Agri-

1 culture regarding the administration of the laws
2 specified in subsection (b).

3 (2) RULEMAKING COORDINATION.—The Sec-
4 retary of Agriculture shall coordinate with the Sec-
5 retary whenever the Secretary of Agriculture pre-
6 scribes regulations, policies, or procedures for ad-
7 ministering the functions transferred under sub-
8 section (a) under a law specified in subsection (b).

9 (3) EFFECTIVE ADMINISTRATION.—The Sec-
10 retary, in consultation with the Secretary of Agri-
11 culture, may issue such directives and guidelines as
12 are necessary to ensure the effective use of personnel
13 of the Department of Homeland Security to carry
14 out the functions transferred pursuant to subsection
15 (a).

16 (e) TRANSFER AGREEMENT.—

17 (1) AGREEMENT REQUIRED; REVISION.—Before
18 the end of the transition period, as defined in section
19 1501, the Secretary of Agriculture and the Secretary
20 shall enter into an agreement to effectuate the
21 transfer of functions required by subsection (a). The
22 Secretary of Agriculture and the Secretary may
23 jointly revise the agreement as necessary thereafter.

1 (2) REQUIRED TERMS.—The agreement re-
2 quired by this subsection shall specifically address
3 the following:

4 (A) The supervision by the Secretary of
5 Agriculture of the training of employees of the
6 Secretary to carry out the functions transferred
7 pursuant to subsection (a).

8 (B) The transfer of funds to the Secretary
9 under subsection (f).

10 (3) COOPERATION AND RECIPROCITY.—The
11 Secretary of Agriculture and the Secretary may in-
12 clude as part of the agreement the following:

13 (A) Authority for the Secretary to perform
14 functions delegated to the Animal and Plant
15 Health Inspection Service of the Department of
16 Agriculture regarding the protection of domes-
17 tic livestock and plants, but not transferred to
18 the Secretary pursuant to subsection (a).

19 (B) Authority for the Secretary of Agri-
20 culture to use employees of the Department of
21 Homeland Security to carry out authorities del-
22 egated to the Animal and Plant Health Inspec-
23 tion Service regarding the protection of domes-
24 tic livestock and plants.

1 (f) PERIODIC TRANSFER OF FUNDS TO DEPART-
2 MENT OF HOMELAND SECURITY.—

3 (1) TRANSFER OF FUNDS.—Out of funds col-
4 lected by fees authorized under sections 2508 and
5 2509 of the Food, Agriculture, Conservation, and
6 Trade Act of 1990 (21 U.S.C. 136, 136a), the Sec-
7 retary of Agriculture shall transfer, from time to
8 time in accordance with the agreement under sub-
9 section (e), to the Secretary funds for activities car-
10 ried out by the Secretary for which such fees were
11 collected.

12 (2) LIMITATION.—The proportion of fees col-
13 lected pursuant to such sections that are transferred
14 to the Secretary under this subsection may not ex-
15 ceed the proportion of the costs incurred by the Sec-
16 retary to all costs incurred to carry out activities
17 funded by such fees.

18 (g) TRANSFER OF DEPARTMENT OF AGRICULTURE
19 EMPLOYEES.—Not later than the completion of the transi-
20 tion period defined under section 1501, the Secretary of
21 Agriculture shall transfer to the Secretary not more than
22 3,200 full-time equivalent positions of the Department of
23 Agriculture.

1 (h) PROTECTION OF INSPECTION ANIMALS.—Title V
2 of the Agricultural Risk Protection Act of 2000 (7 U.S.C.
3 2279e, 2279f) is amended—

4 (1) in section 501(a)—

5 (A) by inserting “or the Department of
6 Homeland Security” after “Department of Ag-
7 riculture”; and

8 (B) by inserting “or the Secretary of
9 Homeland Security” after “Secretary of Agri-
10 culture”;

11 (2) by striking “Secretary” each place it ap-
12 pears (other than in sections 501(a) and 501(e))
13 and inserting “Secretary concerned”; and

14 (3) by adding at the end of section 501 the fol-
15 lowing new subsection:

16 “(e) SECRETARY CONCERNED DEFINED.—In this
17 title, the term ‘Secretary concerned’ means—

18 “(1) the Secretary of Agriculture, with respect
19 to an animal used for purposes of official inspections
20 by the Department of Agriculture; and

21 “(2) the Secretary of Homeland Security, with
22 respect to an animal used for purposes of official in-
23 spections by the Department of Homeland Secu-
24 rity.”.

1 **SEC. 422. FUNCTIONS OF ADMINISTRATOR OF GENERAL**
2 **SERVICES.**

3 (a) OPERATION, MAINTENANCE, AND PROTECTION
4 OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in
5 this Act may be construed to affect the functions or au-
6 thorities of the Administrator of General Services with re-
7 spect to the operation, maintenance, and protection of
8 buildings and grounds owned or occupied by the Federal
9 Government and under the jurisdiction, custody, or control
10 of the Administrator. Except for the law enforcement and
11 related security functions transferred under section
12 403(3), the Administrator shall retain all powers, func-
13 tions, and authorities vested in the Administrator under
14 chapter 10 of title 40, United States Code, and other pro-
15 visions of law that are necessary for the operation, mainte-
16 nance, and protection of such buildings and grounds.

17 (b) COLLECTION OF RENTS AND FEES; FEDERAL
18 BUILDINGS FUND.—

19 (1) STATUTORY CONSTRUCTION.—Nothing in
20 this Act may be construed—

21 (A) to direct the transfer of, or affect, the
22 authority of the Administrator of General Serv-
23 ices to collect rents and fees, including fees col-
24 lected for protective services; or

25 (B) to authorize the Secretary or any other
26 official in the Department to obligate amounts

1 in the Federal Buildings Fund established by
2 section 490(f) of title 40, United States Code.

3 (2) USE OF TRANSFERRED AMOUNTS.—Any
4 amounts transferred by the Administrator of Gen-
5 eral Services to the Secretary out of rents and fees
6 collected by the Administrator shall be used by the
7 Secretary solely for the protection of buildings or
8 grounds owned or occupied by the Federal Govern-
9 ment.

10 **SEC. 423. FUNCTIONS OF TRANSPORTATION SECURITY AD-**
11 **MINISTRATION.**

12 (a) CONSULTATION WITH FEDERAL AVIATION AD-
13 MINISTRATION.—The Secretary and other officials in the
14 Department shall consult with the Administrator of the
15 Federal Aviation Administration before taking any action
16 that might affect aviation safety, air carrier operations,
17 aircraft airworthiness, or the use of airspace. The Sec-
18 retary shall establish a liaison office within the Depart-
19 ment for the purpose of consulting with the Administrator
20 of the Federal Aviation Administration.

21 (b) REPORT TO CONGRESS.—Not later than 60 days
22 after the date of enactment of this Act, the Secretary of
23 Transportation shall transmit to Congress a report con-
24 taining a plan for complying with the requirements of sec-

1 tion 44901(d) of title 49, United States Code, as amended
2 by section 426 of this Act.

3 (c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

4 (1) GRANT OF AUTHORITY.—Nothing in this
5 Act may be construed to vest in the Secretary or any
6 other official in the Department any authority over
7 transportation security that is not vested in the
8 Under Secretary of Transportation for Security, or
9 in the Secretary of Transportation under chapter
10 449 of title 49, United States Code, on the day be-
11 fore the date of enactment of this Act.

12 (2) OBLIGATION OF AIP FUNDS.—Nothing in
13 this Act may be construed to authorize the Secretary
14 or any other official in the Department to obligate
15 amounts made available under section 48103 of title
16 49, United States Code.

17 **SEC. 424. PRESERVATION OF TRANSPORTATION SECURITY**
18 **ADMINISTRATION AS A DISTINCT ENTITY.**

19 (a) IN GENERAL.—Notwithstanding any other provi-
20 sion of this Act, and subject to subsection (b), the Trans-
21 portation Security Administration shall be maintained as
22 a distinct entity within the Department under the Under
23 Secretary for Border Transportation and Security.

24 (b) SUNSET.—Subsection (a) shall cease to apply 2
25 years after the date of enactment of this Act.

1 **SEC. 425. EXPLOSIVE DETECTION SYSTEMS.**

2 Section 44901(d) of title 49, United States
3 Code, is amended by adding at the end the fol-
4 lowing:

5 “(2) DEADLINE.—

6 “(A) IN GENERAL.—If, in his discretion or
7 at the request of an airport, the Under Sec-
8 retary of Transportation for Security deter-
9 mines that the Transportation Security Admin-
10 istration is not able to deploy explosive detec-
11 tion systems required to be deployed under
12 paragraph (1) at all airports where explosive
13 detection systems are required by December 31,
14 2002, then with respect to each airport for
15 which the Under Secretary makes that
16 determination—

17 “(i) the Under Secretary shall submit
18 to the Senate Committee on Commerce,
19 Science, and Transportation and the
20 House of Representatives Committee on
21 Transportation and Infrastructure a de-
22 tailed plan (which may be submitted in
23 classified form) for the deployment of the
24 number of explosive detection systems at
25 that airport necessary to meet the require-
26 ments of paragraph (1) as soon as prac-

1 ticable at that airport but in no event later
2 than December 31, 2003; and

3 “(ii) the Under Secretary shall take
4 all necessary action to ensure that alter-
5 native means of screening all checked
6 baggage is implemented until the require-
7 ments of paragraph (1) have been met.

8 “(B) CRITERIA FOR DETERMINATION.—In
9 making a determination under subparagraph
10 (A), the Under Secretary shall take into
11 account—

12 “(i) the nature and extent of the re-
13 quired modifications to the airport’s ter-
14 minal buildings, and the technical, engi-
15 neering, design and construction issues;

16 “(ii) the need to ensure that such in-
17 stallations and modifications are effective;
18 and

19 “(iii) the feasibility and cost-effective-
20 ness of deploying explosive detection sys-
21 tems in the baggage sorting area or other
22 non-public area rather than the lobby of an
23 airport terminal building.

24 “(C) RESPONSE.—The Under Secretary
25 shall respond to the request of an airport under

1 subparagraph (A) within 14 days of receiving
2 the request. A denial of request shall create no
3 right of appeal or judicial review.

4 “(D) AIRPORT EFFORT REQUIRED.—Each
5 airport with respect to which the Under Sec-
6 retary makes a determination under subpara-
7 graph (A) shall—

8 “(i) cooperate fully with the Trans-
9 portation Security Administration with re-
10 spect to screening checked baggage and
11 changes to accommodate explosive detec-
12 tion systems; and

13 “(ii) make security projects a priority
14 for the obligation or expenditure of funds
15 made available under chapter 417 or 471
16 until explosive detection systems required
17 to be deployed under paragraph (1) have
18 been deployed at that airport.

19 “(3) REPORTS.—Until the Transportation Se-
20 curity Administration has met the requirements of
21 paragraph (1), the Under Secretary shall submit a
22 classified report every 30 days after the date of en-
23 actment of the Aviation Security Improvement Act
24 to the Senate Committee on Commerce, Science, and
25 Transportation and the House of Representatives

1 Committee on Transportation and Infrastructure de-
2 scribing the progress made toward meeting such re-
3 quirements at each airport.”.

4 **SEC. 426. TRANSPORTATION SECURITY.**

5 (a) TRANSPORTATION SECURITY OVERSIGHT
6 BOARD.—

7 (1) ESTABLISHMENT.—Section 115(a) of title
8 49, United States Code, is amended by striking “De-
9 partment of Transportation” and inserting “Depart-
10 ment of Homeland Security”.

11 (2) MEMBERSHIP.—Section 115(b)(1) of title
12 49, United States Code, is amended—

13 (A) by striking subparagraph (G);

14 (B) by redesignating subparagraphs (A)
15 through (F) as subparagraphs (B) through (G),
16 respectively; and

17 (C) by inserting before subparagraph (B)
18 (as so redesignated) the following:

19 “(A) The Secretary of Homeland Security,
20 or the Secretary’s designee.”.

21 (3) CHAIRPERSON.—Section 115(b)(2) of title
22 49, United States Code, is amended by striking
23 “Secretary of Transportation” and inserting “Sec-
24 retary of Homeland Security”.

1 (b) APPROVAL OF AIP GRANT APPLICATIONS FOR
2 SECURITY ACTIVITIES.—Section 47106 of title 49, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 “(g) CONSULTATION WITH SECRETARY OF HOME-
6 LAND SECURITY.—The Secretary shall consult with the
7 Secretary of Homeland Security before approving an ap-
8 plication under this subchapter for an airport development
9 project grant for activities described in section
10 47102(3)(B)(ii) only as they relate to security equipment
11 or section 47102(3)(B)(x) only as they relate to installa-
12 tion of bulk explosive detection system.”.

13 **SEC. 427. COORDINATION OF INFORMATION AND INFORMA-**
14 **TION TECHNOLOGY.**

15 (a) DEFINITION OF AFFECTED AGENCY.—In this
16 section, the term “affected agency” means—

17 (1) the Department;
18 (2) the Department of Agriculture;
19 (3) the Department of Health and Human
20 Services; and

21 (4) any other department or agency determined
22 to be appropriate by the Secretary.

23 (b) COORDINATION.—The Secretary, in coordination
24 with the Secretary of Agriculture, the Secretary of Health
25 and Human Services, and the head of each other depart-

1 ment or agency determined to be appropriate by the Sec-
2 retary, shall ensure that appropriate information (as de-
3 termined by the Secretary) concerning inspections of arti-
4 cles that are imported or entered into the United States,
5 and are inspected or regulated by 1 or more affected agen-
6 cies, is timely and efficiently exchanged between the af-
7 fected agencies.

8 (c) REPORT AND PLAN.—Not later than 18 months
9 after the date of enactment of this Act, the Secretary, in
10 consultation with the Secretary of Agriculture, the Sec-
11 retary of Health and Human Services, and the head of
12 each other department or agency determined to be appro-
13 priate by the Secretary, shall submit to Congress—

14 (1) a report on the progress made in imple-
15 menting this section; and

16 (2) a plan to complete implementation of this
17 section.

18 **SEC. 428. VISA ISSUANCE.**

19 (a) DEFINITION.—In this subsection, the term “con-
20 sular office” has the meaning given that term under sec-
21 tion 101(a)(9) of the Immigration and Nationality Act (8
22 U.S.C. 1101(a)(9)).

23 (b) IN GENERAL.—Notwithstanding section 104(a)
24 of the Immigration and Nationality Act (8 U.S.C.

1 1104(a)) or any other provision of law, and except as pro-
2 vided in subsection (c) of this section, the Secretary—

3 (1) shall be vested exclusively with all authori-
4 ties to issue regulations with respect to, administer,
5 and enforce the provisions of such Act, and of all
6 other immigration and nationality laws, relating to
7 the functions of consular officers of the United
8 States in connection with the granting or refusal of
9 visas, and shall have the authority to refuse visas in
10 accordance with law and to develop programs of
11 homeland security training for consular officers (in
12 addition to consular training provided by the Sec-
13 retary of State), which authorities shall be exercised
14 through the Secretary of State, except that the Sec-
15 retary shall not have authority to alter or reverse the
16 decision of a consular officer to refuse a visa to an
17 alien; and

18 (2) shall have authority to confer or impose
19 upon any officer or employee of the United States,
20 with the consent of the head of the executive agency
21 under whose jurisdiction such officer or employee is
22 serving, any of the functions specified in paragraph
23 (1).

24 (c) AUTHORITY OF THE SECRETARY OF STATE.—

1 (1) IN GENERAL.—Notwithstanding subsection
2 (b), the Secretary of State may direct a consular of-
3 ficer to refuse a visa to an alien if the Secretary of
4 State deems such refusal necessary or advisable in
5 the foreign policy or security interests of the United
6 States.

7 (2) CONSTRUCTION REGARDING AUTHORITY.—
8 Nothing in this section, consistent with the Sec-
9 retary of Homeland Security’s authority to refuse
10 visas in accordance with law, shall be construed as
11 affecting the authorities of the Secretary of State
12 under the following provisions of law:

13 (A) Section 101(a)(15)(A) of the Immigra-
14 tion and Nationality Act (8 U.S.C.
15 1101(a)(15)(A)).

16 (B) Section 204(d)(2) of the Immigration
17 and Nationality Act (8 U.S.C. 1154) (as it will
18 take effect upon the entry into force of the Con-
19 vention on Protection of Children and Coopera-
20 tion in Respect to Inter-Country adoption).

21 (C) Section 212(a)(3)(B)(i)(IV)(bb) of the
22 Immigration and Nationality Act (8 U.S.C.
23 1182(a)(3)(B)(i)(IV)(bb)).

1 (D) Section 212(a)(3)(B)(i)(VI) of the Im-
2 migration and Nationality Act (8 U.S.C.
3 1182(a)(3)(B)(i)(VI)).

4 (E) Section 212(a)(3)(B)(vi)(II) of the Im-
5 migration and Nationality Act (8 U.S.C.
6 1182(a)(3)(B)(vi)(II)).

7 (F) Section 212(a)(3)(C) of the Immigra-
8 tion and Nationality Act (8 U.S.C.
9 1182(a)(3)(C)).

10 (G) Section 212(a)(10)(C) of the Immigra-
11 tion and Nationality Act (8 U.S.C.
12 1182(a)(10)(C)).

13 (H) Section 212(f) of the Immigration and
14 Nationality Act (8 U.S.C. 1182(f)).

15 (I) Section 219(a) of the Immigration and
16 Nationality Act (8 U.S.C. 1189(a)).

17 (J) Section 237(a)(4)(C) of the Immigra-
18 tion and Nationality Act (8 U.S.C.
19 1227(a)(4)(C)).

20 (K) Section 401 of the Cuban Liberty and
21 Democratic Solidarity (LIBERTAD) Act of
22 1996 (22 U.S.C. 6034; Public Law 104–114).

23 (L) Section 613 of the Departments of
24 Commerce, Justice, and State, the Judiciary
25 and Related Agencies Appropriations Act, 1999

1 (as contained in section 101(b) of division A of
2 Public Law 105–277) (Omnibus Consolidated
3 and Emergency Supplemental Appropriations
4 Act, 1999); 112 Stat. 2681; H.R. 4328 (origi-
5 nally H.R. 4276) as amended by section 617 of
6 Public Law 106–553.

7 (M) Section 103(f) of the Chemical Weap-
8 on Convention Implementation Act of 1998
9 (112 Stat. 2681–865).

10 (N) Section 801 of H.R. 3427, the Admi-
11 ral James W. Nance and Meg Donovan Foreign
12 Relations Authorization Act, Fiscal Years 2000
13 and 2001, as enacted by reference in Public
14 Law 106–113.

15 (O) Section 568 of the Foreign Operations,
16 Export Financing, and Related Programs Ap-
17 propriations Act, 2002 (Public Law 107–115).

18 (P) Section 51 of the State Department
19 Basic Authorities Act of 1956 (22 U.S.C.
20 2723).

21 (d) CONSULAR OFFICERS AND CHIEFS OF MIS-
22 SIONS.—

23 (1) IN GENERAL.—Nothing in this subsection
24 may be construed to alter or affect—

1 (A) the employment status of consular offi-
2 cers as employees of the Department of State;
3 or

4 (B) the authority of a chief of mission
5 under section 207 of the Foreign Service Act of
6 1980 (22 U.S.C. 3927).

7 (2) CONSTRUCTION REGARDING DELEGATION
8 OF AUTHORITY.—Nothing in this section shall be
9 construed to affect any delegation of authority to the
10 Secretary of State by the President pursuant to any
11 proclamation issued under section 212(f) of the Im-
12 migration and Nationality Act (8 U.S.C. 1182(f)),
13 consistent with the Secretary of Homeland Secu-
14 rity’s authority to refuse visas in accordance with
15 law.

16 (e) ASSIGNMENT OF HOMELAND SECURITY EMPLOY-
17 EES TO DIPLOMATIC AND CONSULAR POSTS.—

18 (1) IN GENERAL.—The Secretary is authorized
19 to assign employees of the Department to each dip-
20 lomatic and consular post at which visas are issued,
21 unless the Secretary determines that such an assign-
22 ment at a particular post would not promote home-
23 land security.

24 (2) FUNCTIONS.—Employees assigned under
25 paragraph (1) shall perform the following functions:

1 (A) Provide expert advice and training to
2 consular officers regarding specific security
3 threats relating to the adjudication of individual
4 visa applications or classes of applications.

5 (B) Review any such applications, either
6 on the initiative of the employee of the Depart-
7 ment or upon request by a consular officer or
8 other person charged with adjudicating such ap-
9 plications.

10 (C) Conduct investigations with respect to
11 consular matters under the jurisdiction of the
12 Secretary.

13 (3) EVALUATION OF CONSULAR OFFICERS.—
14 The Secretary of State shall evaluate, in consulta-
15 tion with the Secretary, as deemed appropriate by
16 the Secretary, the performance of consular officers
17 with respect to the processing and adjudication of
18 applications for visas in accordance with perform-
19 ance standards developed by the Secretary for these
20 procedures.

21 (4) REPORT.—The Secretary shall, on an an-
22 nual basis, submit a report to Congress that de-
23 scribes the basis for each determination under para-
24 graph (1) that the assignment of an employee of the

1 Department at a particular diplomatic post would
2 not promote homeland security.

3 (5) PERMANENT ASSIGNMENT; PARTICIPATION
4 IN TERRORIST LOOKOUT COMMITTEE.—When appro-
5 priate, employees of the Department assigned to per-
6 form functions described in paragraph (2) may be
7 assigned permanently to overseas diplomatic or con-
8 sular posts with country-specific or regional respon-
9 sibility. If the Secretary so directs, any such em-
10 ployee, when present at an overseas post, shall par-
11 ticipate in the terrorist lookout committee estab-
12 lished under section 304 of the Enhanced Border
13 Security and Visa Entry Reform Act of 2002 (8
14 U.S.C. 1733).

15 (6) TRAINING AND HIRING.—

16 (A) IN GENERAL.—The Secretary shall en-
17 sure, to the extent possible, that any employees
18 of the Department assigned to perform func-
19 tions under paragraph (2) and, as appropriate,
20 consular officers, shall be provided the nec-
21 essary training to enable them to carry out
22 such functions, including training in foreign
23 languages, interview techniques, and fraud de-
24 tection techniques, in conditions in the par-

1 particular country where each employee is as-
2 signed, and in other appropriate areas of study.

3 (B) USE OF CENTER.—The Secretary is
4 authorized to use the National Foreign Affairs
5 Training Center, on a reimbursable basis, to ob-
6 tain the training described in subparagraph
7 (A).

8 (7) REPORT.—Not later than 1 year after the
9 date of enactment of this Act, the Secretary and the
10 Secretary of State shall submit to Congress—

11 (A) a report on the implementation of this
12 subsection; and

13 (B) any legislative proposals necessary to
14 further the objectives of this subsection.

15 (8) EFFECTIVE DATE.—This subsection shall
16 take effect on the earlier of—

17 (A) the date on which the President pub-
18 lishes notice in the Federal Register that the
19 President has submitted a report to Congress
20 setting forth a memorandum of understanding
21 between the Secretary and the Secretary of
22 State governing the implementation of this sec-
23 tion; or

24 (B) the date occurring 1 year after the
25 date of enactment of this Act.

1 (f) NO CREATION OF PRIVATE RIGHT OF ACTION.—

2 Nothing in this section shall be construed to create or au-
3 thorize a private right of action to challenge a decision
4 of a consular officer or other United States official or em-
5 ployee to grant or deny a visa.

6 (g) STUDY REGARDING USE OF FOREIGN NATION-
7 ALS.—

8 (1) IN GENERAL.—The Secretary of Homeland
9 Security shall conduct a study of the role of foreign
10 nationals in the granting or refusal of visas and
11 other documents authorizing entry of aliens into the
12 United States. The study shall address the following:

13 (A) The proper role, if any, of foreign na-
14 tionals in the process of rendering decisions on
15 such grants and refusals.

16 (B) Any security concerns involving the
17 employment of foreign nationals.

18 (C) Whether there are cost-effective alter-
19 natives to the use of foreign nationals.

20 (2) REPORT.—Not later than 1 year after the
21 date of the enactment of this Act, the Secretary
22 shall submit a report containing the findings of the
23 study conducted under paragraph (1) to the Com-
24 mittee on the Judiciary, the Committee on Inter-
25 national Relations, and the Committee on Govern-

1 ment Reform of the House of Representatives, and
2 the Committee on the Judiciary, the Committee on
3 Foreign Relations, and the Committee on Govern-
4 ment Affairs of the Senate.

5 (h) REPORT.—Not later than 120 days after the date
6 of the enactment of this Act, the Director of the Office
7 of Science and Technology Policy shall submit to Congress
8 a report on how the provisions of this section will affect
9 procedures for the issuance of student visas.

10 (i) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—
11 Notwithstanding any other provision of law, after the date
12 of the enactment of this Act all third party screening pro-
13 grams in Saudi Arabia shall be terminated. On-site per-
14 sonnel of the Department of Homeland Security shall re-
15 view all visa applications prior to adjudication.

16 **SEC. 429. INFORMATION ON VISA DENIALS REQUIRED TO**
17 **BE ENTERED INTO ELECTRONIC DATA SYS-**
18 **TEM.**

19 (a) IN GENERAL.—Whenever a consular officer of the
20 United States denies a visa to an applicant, the consular
21 officer shall enter the fact and the basis of the denial and
22 the name of the applicant into the interoperable electronic
23 data system implemented under section 202(a) of the En-
24 hanced Border Security and Visa Entry Reform Act of
25 2002 (8 U.S.C. 1722(a)).

1 (b) PROHIBITION.—In the case of any alien with re-
2 spect to whom a visa has been denied under subsection
3 (a)—

4 (1) no subsequent visa may be issued to the
5 alien unless the consular officer considering the
6 alien’s visa application has reviewed the information
7 concerning the alien placed in the interoperable elec-
8 tronic data system, has indicated on the alien’s ap-
9 plication that the information has been reviewed,
10 and has stated for the record why the visa is being
11 issued or a waiver of visa ineligibility recommended
12 in spite of that information; and

13 (2) the alien may not be admitted to the United
14 States without a visa issued in accordance with the
15 procedures described in paragraph (1).

16 **SEC. 430. OFFICE FOR DOMESTIC PREPAREDNESS.**

17 (a) IN GENERAL.—The Office for Domestic Pre-
18 paredness shall be within the Directorate of Border and
19 Transportation Security.

20 (b) DIRECTOR.—There shall be a Director of the Of-
21 fice for Domestic Preparedness, who shall be appointed
22 by the President, by and with the advice and consent of
23 the Senate. The Director of the Office for Domestic Pre-
24 paredness shall report directly to the Under Secretary for
25 Border and Transportation Security.

1 (c) RESPONSIBILITIES.—The Office for Domestic
2 Preparedness shall have the primary responsibility within
3 the executive branch of Government for the preparedness
4 of the United States for acts of terrorism, including—

5 (1) coordinating preparedness efforts at the
6 Federal level, and working with all State, local, trib-
7 al, parish, and private sector emergency response
8 providers on all matters pertaining to combating ter-
9 rorism, including training, exercises, and equipment
10 support;

11 (2) coordinating or, as appropriate, consoli-
12 dating communications and systems of communica-
13 tions relating to homeland security at all levels of
14 government;

15 (3) directing and supervising terrorism pre-
16 paredness grant programs of the Federal Govern-
17 ment (other than those programs administered by
18 the Department of Health and Human Services) for
19 all emergency response providers;

20 (4) incorporating the Strategy priorities into
21 planning guidance on an agency level for the pre-
22 paredness efforts of the Office for Domestic Pre-
23 paredness;

24 (5) providing agency-specific training for agents
25 and analysts within the Department, other agencies,

1 and State and local agencies and international enti-
2 ties;

3 (6) as the lead executive branch agency for pre-
4 paredness of the United States for acts of terrorism,
5 cooperating closely with the Federal Emergency
6 Management Agency, which shall have the primary
7 responsibility within the executive branch to prepare
8 for and mitigate the effects of nonterrorist-related
9 disasters in the United States;

10 (7) assisting and supporting the Secretary, in
11 coordination with other Directorates and entities
12 outside the Department, in conducting appropriate
13 risk analysis and risk management activities of
14 State, local, and tribal governments consistent with
15 the mission and functions of the Directorate; and

16 (8) those elements of the Office of National
17 Preparedness of the Federal Emergency Manage-
18 ment Agency which relate to terrorism, which shall
19 be consolidated within the Department in the Office
20 for Domestic Preparedness established under this
21 section.

22 (d) FISCAL YEARS 2003 and 2004.—During fiscal
23 year 2003 and fiscal year 2004, the Director of the Office
24 for Domestic Preparedness established under this section
25 shall manage and carry out those functions of the Office

1 for Domestic Preparedness of the Department of Justice
 2 (transferred under this section) before September 11,
 3 2001, under the same terms, conditions, policies, and au-
 4 thorities, and with the required level of personnel, assets,
 5 and budget before September 11, 2001.

6 **Subtitle D—Immigration**
 7 **Enforcement Functions**

8 **SEC. 441. TRANSFER OF FUNCTIONS TO UNDER SECRETARY**
 9 **FOR BORDER AND TRANSPORTATION SECU-**
 10 **RITY.**

11 In accordance with title XV (relating to transition
 12 provisions), there shall be transferred from the Commis-
 13 sioner of Immigration and Naturalization to the Under
 14 Secretary for Border and Transportation Security all
 15 functions performed under the following programs, and all
 16 personnel, assets, and liabilities pertaining to such pro-
 17 grams, immediately before such transfer occurs:

- 18 (1) The Border Patrol program.
 19 (2) The detention and removal program.
 20 (3) The intelligence program.
 21 (4) The investigations program.
 22 (5) The inspections program.

23 **SEC. 442. ESTABLISHMENT OF BUREAU OF BORDER SECU-**
 24 **RITY.**

25 (a) ESTABLISHMENT OF BUREAU.—

1 (1) IN GENERAL.—There shall be in the De-
2 partment of Homeland Security a bureau to be
3 known as the “Bureau of Border Security”.

4 (2) ASSISTANT SECRETARY.—The head of the
5 Bureau of Border Security shall be the Assistant
6 Secretary of the Bureau of Border Security, who—

7 (A) shall report directly to the Under Sec-
8 retary for Border and Transportation Security;
9 and

10 (B) shall have a minimum of 5 years pro-
11 fessional experience in law enforcement, and a
12 minimum of 5 years of management experience.

13 (3) FUNCTIONS.—The Assistant Secretary of
14 the Bureau of Border Security—

15 (A) shall establish the policies for per-
16 forming such functions as are—

17 (i) transferred to the Under Secretary
18 for Border and Transportation Security by
19 section 441 and delegated to the Assistant
20 Secretary by the Under Secretary for Bor-
21 der and Transportation Security; or

22 (ii) otherwise vested in the Assistant
23 Secretary by law;

24 (B) shall oversee the administration of
25 such policies; and

1 (C) shall advise the Under Secretary for
2 Border and Transportation Security with re-
3 spect to any policy or operation of the Bureau
4 of Border Security that may affect the Bureau
5 of Citizenship and Immigration Services estab-
6 lished under subtitle E, including potentially
7 conflicting policies or operations.

8 (4) PROGRAM TO COLLECT INFORMATION RE-
9 LATING TO FOREIGN STUDENTS.—The Assistant
10 Secretary of the Bureau of Border Security shall be
11 responsible for administering the program to collect
12 information relating to nonimmigrant foreign stu-
13 dents and other exchange program participants de-
14 scribed in section 641 of the Illegal Immigration Re-
15 form and Immigrant Responsibility Act of 1996 (8
16 U.S.C. 1372), including the Student and Exchange
17 Visitor Information System established under that
18 section, and shall use such information to carry out
19 the enforcement functions of the Bureau.

20 (5) MANAGERIAL ROTATION PROGRAM.—

21 (A) IN GENERAL.—Not later than 1 year
22 after the date on which the transfer of func-
23 tions specified under section 441 takes effect,
24 the Assistant Secretary of the Bureau of Bor-
25 der Security shall design and implement a man-

1 agerial rotation program under which employees
2 of such bureau holding positions involving su-
3 pervisory or managerial responsibility and clas-
4 sified, in accordance with chapter 51 of title 5,
5 United States Code, as a GS-14 or above,
6 shall—

7 (i) gain some experience in all the
8 major functions performed by such bureau;
9 and

10 (ii) work in at least one local office of
11 such bureau.

12 (B) REPORT.—Not later than 2 years after
13 the date on which the transfer of functions
14 specified under section 441 takes effect, the
15 Secretary shall submit a report to the Congress
16 on the implementation of such program.

17 (b) CHIEF OF POLICY AND STRATEGY.—

18 (1) IN GENERAL.—There shall be a position of
19 Chief of Policy and Strategy for the Bureau of Bor-
20 der Security.

21 (2) FUNCTIONS.—In consultation with Bureau
22 of Border Security personnel in local offices, the
23 Chief of Policy and Strategy shall be responsible
24 for—

1 (A) making policy recommendations and
2 performing policy research and analysis on im-
3 migration enforcement issues; and

4 (B) coordinating immigration policy issues
5 with the Chief of Policy and Strategy for the
6 Bureau of Citizenship and Immigration Services
7 (established under subtitle E), as appropriate.

8 (c) **LEGAL ADVISOR.**—There shall be a principal legal
9 advisor to the Assistant Secretary of the Bureau of Border
10 Security. The legal advisor shall provide specialized legal
11 advice to the Assistant Secretary of the Bureau of Border
12 Security and shall represent the bureau in all exclusion,
13 deportation, and removal proceedings before the Executive
14 Office for Immigration Review.

15 **SEC. 443. PROFESSIONAL RESPONSIBILITY AND QUALITY**
16 **REVIEW.**

17 The Under Secretary for Border and Transportation
18 Security shall be responsible for—

19 (1) conducting investigations of noncriminal al-
20 legations of misconduct, corruption, and fraud in-
21 volving any employee of the Bureau of Border Secu-
22 rity that are not subject to investigation by the In-
23 spector General for the Department;

24 (2) inspecting the operations of the Bureau of
25 Border Security and providing assessments of the

1 quality of the operations of such bureau as a whole
2 and each of its components; and

3 (3) providing an analysis of the management of
4 the Bureau of Border Security.

5 **SEC. 444. EMPLOYEE DISCIPLINE.**

6 The Under Secretary for Border and Transportation
7 Security may, notwithstanding any other provision of law,
8 impose disciplinary action, including termination of em-
9 ployment, pursuant to policies and procedures applicable
10 to employees of the Federal Bureau of Investigation, on
11 any employee of the Bureau of Border Security who will-
12 fully deceives the Congress or agency leadership on any
13 matter.

14 **SEC. 445. REPORT ON IMPROVING ENFORCEMENT FUNC-**
15 **TIONS.**

16 (a) IN GENERAL.—The Secretary, not later than 1
17 year after being sworn into office, shall submit to the
18 Committees on Appropriations and the Judiciary of the
19 House of Representatives and of the Senate a report with
20 a plan detailing how the Bureau of Border Security, after
21 the transfer of functions specified under section 441 takes
22 effect, will enforce comprehensively, effectively, and fairly
23 all the enforcement provisions of the Immigration and Na-
24 tionality Act (8 U.S.C. 1101 et seq.) relating to such func-
25 tions.

1 (b) CONSULTATION.—In carrying out subsection (a),
2 the Secretary of Homeland Security shall consult with the
3 Attorney General, the Secretary of State, the Director of
4 the Federal Bureau of Investigation, the Secretary of the
5 Treasury, the Secretary of Labor, the Commissioner of
6 Social Security, the Director of the Executive Office for
7 Immigration Review, and the heads of State and local law
8 enforcement agencies to determine how to most effectively
9 conduct enforcement operations.

10 **SEC. 446. SENSE OF CONGRESS REGARDING CONSTRU-**
11 **CTION OF FENCING NEAR SAN DIEGO, CALI-**
12 **FORNIA.**

13 It is the sense of the Congress that completing the
14 14-mile border fence project required to be carried out
15 under section 102(b) of the Illegal Immigration Reform
16 and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103
17 note) should be a priority for the Secretary.

18 **Subtitle E—Citizenship and**
19 **Immigration Services**

20 **SEC. 451. ESTABLISHMENT OF BUREAU OF CITIZENSHIP**
21 **AND IMMIGRATION SERVICES.**

22 (a) ESTABLISHMENT OF BUREAU.—

23 (1) IN GENERAL.—There shall be in the De-
24 partment a bureau to be known as the “Bureau of
25 Citizenship and Immigration Services”.

1 (2) DIRECTOR.—The head of the Bureau of
2 Citizenship and Immigration Services shall be the
3 Director of the Bureau of Citizenship and Immigra-
4 tion Services, who—

5 (A) shall report directly to the Deputy Sec-
6 retary;

7 (B) shall have a minimum of 5 years of
8 management experience; and

9 (C) shall be paid at the same level as the
10 Assistant Secretary of the Bureau of Border
11 Security.

12 (3) FUNCTIONS.—The Director of the Bureau
13 of Citizenship and Immigration Services—

14 (A) shall establish the policies for per-
15 forming such functions as are transferred to the
16 Director by this section or this Act or otherwise
17 vested in the Director by law;

18 (B) shall oversee the administration of
19 such policies;

20 (C) shall advise the Deputy Secretary with
21 respect to any policy or operation of the Bureau
22 of Citizenship and Immigration Services that
23 may affect the Bureau of Border Security of
24 the Department, including potentially con-
25 flicting policies or operations;

1 (D) shall establish national immigration
2 services policies and priorities;

3 (E) shall meet regularly with the Ombuds-
4 man described in section 452 to correct serious
5 service problems identified by the Ombudsman;
6 and

7 (F) shall establish procedures requiring a
8 formal response to any recommendations sub-
9 mitted in the Ombudsman's annual report to
10 Congress within 3 months after its submission
11 to Congress.

12 (4) MANAGERIAL ROTATION PROGRAM.—

13 (A) IN GENERAL.—Not later than 1 year
14 after the effective date specified in section 455,
15 the Director of the Bureau of Citizenship and
16 Immigration Services shall design and imple-
17 ment a managerial rotation program under
18 which employees of such bureau holding posi-
19 tions involving supervisory or managerial re-
20 sponsibility and classified, in accordance with
21 chapter 51 of title 5, United States Code, as a
22 GS-14 or above, shall—

23 (i) gain some experience in all the
24 major functions performed by such bureau;
25 and

1 (ii) work in at least one field office
2 and one service center of such bureau.

3 (B) REPORT.—Not later than 2 years after
4 the effective date specified in section 455, the
5 Secretary shall submit a report to Congress on
6 the implementation of such program.

7 (5) PILOT INITIATIVES FOR BACKLOG ELIMI-
8 NATION.—The Director of the Bureau of Citizenship
9 and Immigration Services is authorized to implement
10 innovative pilot initiatives to eliminate any remain-
11 ing backlog in the processing of immigration benefit
12 applications, and to prevent any backlog in the proc-
13 essing of such applications from recurring, in ac-
14 cordance with section 204(a) of the Immigration
15 Services and Infrastructure Improvements Act of
16 2000 (8 U.S.C. 1573(a)). Such initiatives may in-
17 clude measures such as increasing personnel, trans-
18 ferring personnel to focus on areas with the largest
19 potential for backlog, and streamlining paperwork.

20 (b) TRANSFER OF FUNCTIONS FROM COMMIS-
21 SIONER.—There are transferred from the Commissioner
22 of Immigration and Naturalization to the Director of the
23 Bureau of Citizenship and Immigration Services the fol-
24 lowing functions, and all personnel, infrastructure, and
25 funding provided to the Commissioner in support of such

1 functions immediately before the effective date specified
2 in section 455:

3 (1) Adjudications of immigrant visa petitions.

4 (2) Adjudications of naturalization petitions.

5 (3) Adjudications of asylum and refugee appli-
6 cations.

7 (4) Adjudications performed at service centers.

8 (5) All other adjudications performed by the
9 Immigration and Naturalization Service immediately
10 before the effective date specified in section 455.

11 (c) CHIEF OF POLICY AND STRATEGY.—

12 (1) IN GENERAL.—There shall be a position of
13 Chief of Policy and Strategy for the Bureau of Citi-
14 zenship and Immigration Services.

15 (2) FUNCTIONS.—In consultation with Bureau
16 of Citizenship and Immigration Services personnel in
17 field offices, the Chief of Policy and Strategy shall
18 be responsible for—

19 (A) making policy recommendations and
20 performing policy research and analysis on im-
21 migration services issues; and

22 (B) coordinating immigration policy issues
23 with the Chief of Policy and Strategy for the
24 Bureau of Border Security of the Department.

25 (d) LEGAL ADVISOR.—

1 (1) IN GENERAL.—There shall be a principal
2 legal advisor to the Director of the Bureau of Citi-
3 zenship and Immigration Services.

4 (2) FUNCTIONS.—The legal advisor shall be re-
5 sponsible for—

6 (A) providing specialized legal advice, opin-
7 ions, determinations, regulations, and any other
8 assistance to the Director of the Bureau of Citi-
9 zenship and Immigration Services with respect
10 to legal matters affecting the Bureau of Citi-
11 zenship and Immigration Services; and

12 (B) representing the Bureau of Citizenship
13 and Immigration Services in visa petition ap-
14 peal proceedings before the Executive Office for
15 Immigration Review.

16 (e) BUDGET OFFICER.—

17 (1) IN GENERAL.—There shall be a Budget Of-
18 ficer for the Bureau of Citizenship and Immigration
19 Services.

20 (2) FUNCTIONS.—

21 (A) IN GENERAL.—The Budget Officer
22 shall be responsible for—

23 (i) formulating and executing the
24 budget of the Bureau of Citizenship and
25 Immigration Services;

1 (ii) financial management of the Bu-
2 reau of Citizenship and Immigration Serv-
3 ices; and

4 (iii) collecting all payments, fines, and
5 other debts for the Bureau of Citizenship
6 and Immigration Services.

7 (f) CHIEF OF OFFICE OF CITIZENSHIP.—

8 (1) IN GENERAL.—There shall be a position of
9 Chief of the Office of Citizenship for the Bureau of
10 Citizenship and Immigration Services.

11 (2) FUNCTIONS.—The Chief of the Office of
12 Citizenship for the Bureau of Citizenship and Immi-
13 gration Services shall be responsible for promoting
14 instruction and training on citizenship responsibil-
15 ities for aliens interested in becoming naturalized
16 citizens of the United States, including the develop-
17 ment of educational materials.

18 **SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OM-**
19 **BUDSMAN.**

20 (a) IN GENERAL.—Within the Department, there
21 shall be a position of Citizenship and Immigration Services
22 Ombudsman (in this section referred to as the “Ombuds-
23 man”). The Ombudsman shall report directly to the Dep-
24 uty Secretary. The Ombudsman shall have a background
25 in customer service as well as immigration law.

1 (b) FUNCTIONS.—It shall be the function of the
2 Ombudsman—

3 (1) to assist individuals and employers in re-
4 solving problems with the Bureau of Citizenship and
5 Immigration Services;

6 (2) to identify areas in which individuals and
7 employers have problems in dealing with the Bureau
8 of Citizenship and Immigration Services; and

9 (3) to the extent possible, to propose changes in
10 the administrative practices of the Bureau of Citi-
11 zenship and Immigration Services to mitigate prob-
12 lems identified under paragraph (2).

13 (c) ANNUAL REPORTS.—

14 (1) OBJECTIVES.—Not later than June 30 of
15 each calendar year, the Ombudsman shall report to
16 the Committee on the Judiciary of the House of
17 Representatives and the Senate on the objectives of
18 the Office of the Ombudsman for the fiscal year be-
19 ginning in such calendar year. Any such report shall
20 contain full and substantive analysis, in addition to
21 statistical information, and—

22 (A) shall identify the recommendations the
23 Office of the Ombudsman has made on improv-
24 ing services and responsiveness of the Bureau
25 of Citizenship and Immigration Services;

1 (B) shall contain a summary of the most
2 pervasive and serious problems encountered by
3 individuals and employers, including a descrip-
4 tion of the nature of such problems;

5 (C) shall contain an inventory of the items
6 described in subparagraphs (A) and (B) for
7 which action has been taken and the result of
8 such action;

9 (D) shall contain an inventory of the items
10 described in subparagraphs (A) and (B) for
11 which action remains to be completed and the
12 period during which each item has remained on
13 such inventory;

14 (E) shall contain an inventory of the items
15 described in subparagraphs (A) and (B) for
16 which no action has been taken, the period dur-
17 ing which each item has remained on such in-
18 ventory, the reasons for the inaction, and shall
19 identify any official of the Bureau of Citizen-
20 ship and Immigration Services who is respon-
21 sible for such inaction;

22 (F) shall contain recommendations for
23 such administrative action as may be appro-
24 priate to resolve problems encountered by indi-
25 viduals and employers, including problems cre-

1 ated by excessive backlogs in the adjudication
2 and processing of immigration benefit petitions
3 and applications; and

4 (G) shall include such other information as
5 the Ombudsman may deem advisable.

6 (2) REPORT TO BE SUBMITTED DIRECTLY.—

7 Each report required under this subsection shall be
8 provided directly to the committees described in
9 paragraph (1) without any prior comment or amend-
10 ment from the Secretary, Deputy Secretary, Direc-
11 tor of the Bureau of Citizenship and Immigration
12 Services, or any other officer or employee of the De-
13 partment or the Office of Management and Budget.

14 (d) OTHER RESPONSIBILITIES.—The Ombudsman—

15 (1) shall monitor the coverage and geographic
16 allocation of local offices of the Ombudsman;

17 (2) shall develop guidance to be distributed to
18 all officers and employees of the Bureau of Citizen-
19 ship and Immigration Services outlining the criteria
20 for referral of inquiries to local offices of the Om-
21 budsman;

22 (3) shall ensure that the local telephone number
23 for each local office of the Ombudsman is published
24 and available to individuals and employers served by
25 the office; and

1 (4) shall meet regularly with the Director of the
2 Bureau of Citizenship and Immigration Services to
3 identify serious service problems and to present rec-
4 ommendations for such administrative action as may
5 be appropriate to resolve problems encountered by
6 individuals and employers.

7 (e) PERSONNEL ACTIONS.—

8 (1) IN GENERAL.—The Ombudsman shall have
9 the responsibility and authority—

10 (A) to appoint local ombudsmen and make
11 available at least 1 such ombudsman for each
12 State; and

13 (B) to evaluate and take personnel actions
14 (including dismissal) with respect to any em-
15 ployee of any local office of the Ombudsman.

16 (2) CONSULTATION.—The Ombudsman may
17 consult with the appropriate supervisory personnel of
18 the Bureau of Citizenship and Immigration Services
19 in carrying out the Ombudsman’s responsibilities
20 under this subsection.

21 (f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP
22 AND IMMIGRATION SERVICES.—The Director of the Bu-
23 reau of Citizenship and Immigration Services shall estab-
24 lish procedures requiring a formal response to all rec-

1 ommendations submitted to such director by the Ombuds-
2 man within 3 months after submission to such director.

3 (g) OPERATION OF LOCAL OFFICES.—

4 (1) IN GENERAL.—Each local ombudsman—

5 (A) shall report to the Ombudsman or the
6 delegate thereof;

7 (B) may consult with the appropriate su-
8 pervisory personnel of the Bureau of Citizen-
9 ship and Immigration Services regarding the
10 daily operation of the local office of such om-
11 budsman;

12 (C) shall, at the initial meeting with any
13 individual or employer seeking the assistance of
14 such local office, notify such individual or em-
15 ployer that the local offices of the Ombudsman
16 operate independently of any other component
17 of the Department and report directly to Con-
18 gress through the Ombudsman; and

19 (D) at the local ombudsman's discretion,
20 may determine not to disclose to the Bureau of
21 Citizenship and Immigration Services contact
22 with, or information provided by, such indi-
23 vidual or employer.

24 (2) MAINTENANCE OF INDEPENDENT COMMU-
25 NICATIONS.—Each local office of the Ombudsman

1 shall maintain a phone, facsimile, and other means
2 of electronic communication access, and a post office
3 address, that is separate from those maintained by
4 the Bureau of Citizenship and Immigration Services,
5 or any component of the Bureau of Citizenship and
6 Immigration Services.

7 **SEC. 453. PROFESSIONAL RESPONSIBILITY AND QUALITY**
8 **REVIEW.**

9 (a) IN GENERAL.—The Director of the Bureau of
10 Citizenship and Immigration Services shall be responsible
11 for—

12 (1) conducting investigations of noncriminal al-
13 legations of misconduct, corruption, and fraud in-
14 volving any employee of the Bureau of Citizenship
15 and Immigration Services that are not subject to in-
16 vestigation by the Inspector General for the Depart-
17 ment;

18 (2) inspecting the operations of the Bureau of
19 Citizenship and Immigration Services and providing
20 assessments of the quality of the operations of such
21 bureau as a whole and each of its components; and

22 (3) providing an analysis of the management of
23 the Bureau of Citizenship and Immigration Services.

24 (b) SPECIAL CONSIDERATIONS.—In providing assess-
25 ments in accordance with subsection (a)(2) with respect

1 to a decision of the Bureau of Citizenship and Immigra-
2 tion Services, or any of its components, consideration shall
3 be given to—

4 (1) the accuracy of the findings of fact and con-
5 clusions of law used in rendering the decision;

6 (2) any fraud or misrepresentation associated
7 with the decision; and

8 (3) the efficiency with which the decision was
9 rendered.

10 **SEC. 454. EMPLOYEE DISCIPLINE.**

11 The Director of the Bureau of Citizenship and Immi-
12 gration Services may, notwithstanding any other provision
13 of law, impose disciplinary action, including termination
14 of employment, pursuant to policies and procedures appli-
15 cable to employees of the Federal Bureau of Investigation,
16 on any employee of the Bureau of Citizenship and Immi-
17 gration Services who willfully deceives Congress or agency
18 leadership on any matter.

19 **SEC. 455. EFFECTIVE DATE.**

20 Notwithstanding section 4, sections 451 through 456,
21 and the amendments made by such sections, shall take ef-
22 fect on the date on which the transfer of functions speci-
23 fied under section 441 takes effect.

1 **SEC. 456. TRANSITION.**

2 (a) REFERENCES.—With respect to any function
3 transferred by this subtitle to, and exercised on or after
4 the effective date specified in section 455 by, the Director
5 of the Bureau of Citizenship and Immigration Services,
6 any reference in any other Federal law, Executive order,
7 rule, regulation, or delegation of authority, or any docu-
8 ment of or pertaining to a component of government from
9 which such function is transferred—

10 (1) to the head of such component is deemed to
11 refer to the Director of the Bureau of Citizenship
12 and Immigration Services; or

13 (2) to such component is deemed to refer to the
14 Bureau of Citizenship and Immigration Services.

15 (b) OTHER TRANSITION ISSUES.—

16 (1) EXERCISE OF AUTHORITIES.—Except as
17 otherwise provided by law, a Federal official to
18 whom a function is transferred by this subtitle may,
19 for purposes of performing the function, exercise all
20 authorities under any other provision of law that
21 were available with respect to the performance of
22 that function to the official responsible for the per-
23 formance of the function immediately before the ef-
24 fective date specified in section 455.

25 (2) TRANSFER AND ALLOCATION OF APPRO-
26 PRIATIONS AND PERSONNEL.—The personnel of the

1 Department of Justice employed in connection with
2 the functions transferred by this subtitle (and func-
3 tions that the Secretary determines are properly re-
4 lated to the functions of the Bureau of Citizenship
5 and Immigration Services), and the assets, liabilities,
6 contracts, property, records, and unexpended
7 balance of appropriations, authorizations, alloca-
8 tions, and other funds employed, held, used, arising
9 from, available to, or to be made available to, the
10 Immigration and Naturalization Service in connec-
11 tion with the functions transferred by this subtitle,
12 subject to section 202 of the Budget and Accounting
13 Procedures Act of 1950, shall be transferred to the
14 Director of the Bureau of Citizenship and Immigra-
15 tion Services for allocation to the appropriate com-
16 ponent of the Department. Unexpended funds trans-
17 ferred pursuant to this paragraph shall be used only
18 for the purposes for which the funds were originally
19 authorized and appropriated. The Secretary shall
20 have the right to adjust or realign transfers of funds
21 and personnel effected pursuant to this subtitle for
22 a period of 2 years after the effective date specified
23 in section 455.

1 **SEC. 457. FUNDING FOR CITIZENSHIP AND IMMIGRATION**
2 **SERVICES.**

3 Section 286(m) of the Immigration and Nationality
4 Act (8 U.S.C. 1356(m)) is amended by striking “services,
5 including the costs of similar services provided without
6 charge to asylum applicants or other immigrants.” and in-
7 serting “services.”.

8 **SEC. 458. BACKLOG ELIMINATION.**

9 Section 204(a)(1) of the Immigration Services and
10 Infrastructure Improvements Act of 2000 (8 U.S.C.
11 1573(a)(1)) is amended by striking “not later than one
12 year after the date of enactment of this Act;” and insert-
13 ing “1 year after the date of the enactment of the Home-
14 land Security Act of 2002;”.

15 **SEC. 459. REPORT ON IMPROVING IMMIGRATION SERVICES.**

16 (a) IN GENERAL.—The Secretary, not later than 1
17 year after the effective date of this Act, shall submit to
18 the Committees on the Judiciary and Appropriations of
19 the House of Representatives and of the Senate a report
20 with a plan detailing how the Bureau of Citizenship and
21 Immigration Services, after the transfer of functions spec-
22 ified in this subtitle takes effect, will complete efficiently,
23 fairly, and within a reasonable time, the adjudications de-
24 scribed in paragraphs (1) through (5) of section 451(b).

25 (b) CONTENTS.—For each type of adjudication to be
26 undertaken by the Director of the Bureau of Citizenship

1 and Immigration Services, the report shall include the fol-
2 lowing:

3 (1) Any potential savings of resources that may
4 be implemented without affecting the quality of the
5 adjudication.

6 (2) The goal for processing time with respect to
7 the application.

8 (3) Any statutory modifications with respect to
9 the adjudication that the Secretary considers advis-
10 able.

11 (c) CONSULTATION.—In carrying out subsection (a),
12 the Secretary shall consult with the Secretary of State,
13 the Secretary of Labor, the Assistant Secretary of the Bu-
14 reau of Border Security of the Department, and the Direc-
15 tor of the Executive Office for Immigration Review to de-
16 termine how to streamline and improve the process for ap-
17 plying for and making adjudications described in section
18 451(b) and related processes.

19 **SEC. 460. REPORT ON RESPONDING TO FLUCTUATING**
20 **NEEDS.**

21 Not later than 30 days after the date of the enact-
22 ment of this Act, the Attorney General shall submit to
23 Congress a report on changes in law, including changes
24 in authorizations of appropriations and in appropriations,
25 that are needed to permit the Immigration and Natu-

1 ralization Service, and, after the transfer of functions
2 specified in this subtitle takes effect, the Bureau of Citi-
3 zenship and Immigration Services of the Department, to
4 ensure a prompt and timely response to emergent, unfore-
5 seen, or impending changes in the number of applications
6 for immigration benefits, and otherwise to ensure the ac-
7 commodation of changing immigration service needs.

8 **SEC. 461. APPLICATION OF INTERNET-BASED TECH-**
9 **NOLOGIES.**

10 (a) **ESTABLISHMENT OF TRACKING SYSTEM.**—The
11 Secretary, not later than 1 year after the effective date
12 of this Act, in consultation with the Technology Advisory
13 Committee established under subsection (c), shall estab-
14 lish an Internet-based system, that will permit a person,
15 employer, immigrant, or nonimmigrant who has filings
16 with the Secretary for any benefit under the Immigration
17 and Nationality Act (8 U.S.C. 1101 et seq.), access to on-
18 line information about the processing status of the filing
19 involved.

20 (b) **FEASIBILITY STUDY FOR ONLINE FILING AND**
21 **IMPROVED PROCESSING.**—

22 (1) **ONLINE FILING.**—The Secretary, in con-
23 sultation with the Technology Advisory Committee
24 established under subsection (c), shall conduct a fea-
25 sibility study on the online filing of the filings de-

1 scribed in subsection (a). The study shall include a
2 review of computerization and technology of the Im-
3 migration and Naturalization Service relating to the
4 immigration services and processing of filings related
5 to immigrant services. The study shall also include
6 an estimate of the timeframe and cost and shall con-
7 sider other factors in implementing such a filing sys-
8 tem, including the feasibility of fee payment online.

9 (2) REPORT.—A report on the study under this
10 subsection shall be submitted to the Committees on
11 the Judiciary of the House of Representatives and
12 the Senate not later than 1 year after the effective
13 date of this Act.

14 (c) TECHNOLOGY ADVISORY COMMITTEE.—

15 (1) ESTABLISHMENT.—The Secretary shall es-
16 tablish, not later than 60 days after the effective
17 date of this Act, an advisory committee (in this sec-
18 tion referred to as the “Technology Advisory Com-
19 mittee”) to assist the Secretary in—

20 (A) establishing the tracking system under
21 subsection (a); and

22 (B) conducting the study under subsection
23 (b).

24 The Technology Advisory Committee shall be estab-
25 lished after consultation with the Committees on the

1 Judiciary of the House of Representatives and the
2 Senate.

3 (2) COMPOSITION.—The Technology Advisory
4 Committee shall be composed of representatives
5 from high technology companies capable of estab-
6 lishing and implementing the system in an expedi-
7 tious manner, and representatives of persons who
8 may use the tracking system described in subsection
9 (a) and the online filing system described in sub-
10 section (b)(1).

11 **SEC. 462. CHILDREN'S AFFAIRS.**

12 (a) TRANSFER OF FUNCTIONS.—There are trans-
13 ferred to the Director of the Office of Refugee Resettle-
14 ment of the Department of Health and Human Services
15 functions under the immigration laws of the United States
16 with respect to the care of unaccompanied alien children
17 that were vested by statute in, or performed by, the Com-
18 missioner of Immigration and Naturalization (or any offi-
19 cer, employee, or component of the Immigration and Nat-
20 uralization Service) immediately before the effective date
21 specified in subsection (d).

22 (b) FUNCTIONS.—

23 (1) IN GENERAL.—Pursuant to the transfer
24 made by subsection (a), the Director of the Office of
25 Refugee Resettlement shall be responsible for—

1 (A) coordinating and implementing the
2 care and placement of unaccompanied alien
3 children who are in Federal custody by reason
4 of their immigration status, including devel-
5 oping a plan to be submitted to Congress on
6 how to ensure that qualified and independent
7 legal counsel is timely appointed to represent
8 the interests of each such child, consistent with
9 the law regarding appointment of counsel that
10 is in effect on the date of the enactment of this
11 Act;

12 (B) ensuring that the interests of the child
13 are considered in decisions and actions relating
14 to the care and custody of an unaccompanied
15 alien child;

16 (C) making placement determinations for
17 all unaccompanied alien children who are in
18 Federal custody by reason of their immigration
19 status;

20 (D) implementing the placement deter-
21 minations;

22 (E) implementing policies with respect to
23 the care and placement of unaccompanied alien
24 children;

1 (F) identifying a sufficient number of
2 qualified individuals, entities, and facilities to
3 house unaccompanied alien children;

4 (G) overseeing the infrastructure and per-
5 sonnel of facilities in which unaccompanied
6 alien children reside;

7 (H) reuniting unaccompanied alien chil-
8 dren with a parent abroad in appropriate cases;

9 (I) compiling, updating, and publishing at
10 least annually a state-by-state list of profes-
11 sionals or other entities qualified to provide
12 guardian and attorney representation services
13 for unaccompanied alien children;

14 (J) maintaining statistical information and
15 other data on unaccompanied alien children for
16 whose care and placement the Director is re-
17 sponsible, which shall include—

18 (i) biographical information, such as a
19 child's name, gender, date of birth, country
20 of birth, and country of habitual residence;

21 (ii) the date on which the child came
22 into Federal custody by reason of his or
23 her immigration status;

1 (iii) information relating to the child's
2 placement, removal, or release from each
3 facility in which the child has resided;

4 (iv) in any case in which the child is
5 placed in detention or released, an expla-
6 nation relating to the detention or release;
7 and

8 (v) the disposition of any actions in
9 which the child is the subject;

10 (K) collecting and compiling statistical in-
11 formation from the Department of Justice, the
12 Department of Homeland Security, and the De-
13 partment of State on each department's actions
14 relating to unaccompanied alien children; and

15 (L) conducting investigations and inspec-
16 tions of facilities and other entities in which un-
17 accompanied alien children reside.

18 (2) COORDINATION WITH OTHER ENTITIES; NO
19 RELEASE ON OWN RECOGNIZANCE.—In making de-
20 terminations described in paragraph (1)(C), the Di-
21 rector of the Office of Refugee Resettlement—

22 (A) shall consult with appropriate juvenile
23 justice professionals, the Director of the Bureau
24 of Citizenship and Immigration Services, and
25 the Assistant Secretary of the Bureau of Bor-

1 der Security to ensure that such determinations
2 ensure that unaccompanied alien children de-
3 scribed in such subparagraph—

4 (i) are likely to appear for all hearings
5 or proceedings in which they are involved;

6 (ii) are protected from smugglers,
7 traffickers, or others who might seek to
8 victimize or otherwise engage them in
9 criminal, harmful, or exploitive activity;
10 and

11 (iii) are placed in a setting in which
12 they not likely to pose a danger to them-
13 selves or others; and

14 (B) shall not release such children upon
15 their own recognizance.

16 (3) DUTIES WITH RESPECT TO FOSTER CARE.—

17 In carrying out the duties described in paragraph
18 (1)(G), the Director of the Office of Refugee Reset-
19 tlement is encouraged to use the refugee children
20 foster care system established pursuant to section
21 412(d) of the Immigration and Nationality Act (8
22 U.S.C. 1522(d)) for the placement of unaccom-
23 panied alien children.

24 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion may be construed to transfer the responsibility for

1 adjudicating benefit determinations under the Immigra-
2 tion and Nationality Act (8 U.S.C. 1101 et seq.) from the
3 authority of any official of the Department of Justice, the
4 Department of Homeland Security, or the Department of
5 State.

6 (d) EFFECTIVE DATE.—Notwithstanding section 4,
7 this section shall take effect on the date on which the
8 transfer of functions specified under section 441 takes ef-
9 fect.

10 (e) REFERENCES.—With respect to any function
11 transferred by this section, any reference in any other
12 Federal law, Executive order, rule, regulation, or delega-
13 tion of authority, or any document of or pertaining to a
14 component of government from which such function is
15 transferred—

16 (1) to the head of such component is deemed to
17 refer to the Director of the Office of Refugee Reset-
18 tlement; or

19 (2) to such component is deemed to refer to the
20 Office of Refugee Resettlement of the Department of
21 Health and Human Services.

22 (f) OTHER TRANSITION ISSUES.—

23 (1) EXERCISE OF AUTHORITIES.—Except as
24 otherwise provided by law, a Federal official to
25 whom a function is transferred by this section may,

1 for purposes of performing the function, exercise all
2 authorities under any other provision of law that
3 were available with respect to the performance of
4 that function to the official responsible for the per-
5 formance of the function immediately before the ef-
6 fective date specified in subsection (d).

7 (2) SAVINGS PROVISIONS.—Subsections (a), (b),
8 and (c) of section 1512 shall apply to a transfer of
9 functions under this section in the same manner as
10 such provisions apply to a transfer of functions
11 under this Act to the Department of Homeland Se-
12 curity.

13 (3) TRANSFER AND ALLOCATION OF APPRO-
14 PRIATIONS AND PERSONNEL.—The personnel of the
15 Department of Justice employed in connection with
16 the functions transferred by this section, and the as-
17 sets, liabilities, contracts, property, records, and un-
18 expended balance of appropriations, authorizations,
19 allocations, and other funds employed, held, used,
20 arising from, available to, or to be made available to,
21 the Immigration and Naturalization Service in con-
22 nection with the functions transferred by this sec-
23 tion, subject to section 202 of the Budget and Ac-
24 counting Procedures Act of 1950, shall be trans-
25 ferred to the Director of the Office of Refugee Re-

1 settlement for allocation to the appropriate compo-
2 nent of the Department of Health and Human Serv-
3 ices. Unexpended funds transferred pursuant to this
4 paragraph shall be used only for the purposes for
5 which the funds were originally authorized and ap-
6 propriated.

7 (g) DEFINITIONS.—As used in this section—

8 (1) the term “placement” means the placement
9 of an unaccompanied alien child in either a deten-
10 tion facility or an alternative to such a facility; and

11 (2) the term “unaccompanied alien child”
12 means a child who—

13 (A) has no lawful immigration status in
14 the United States;

15 (B) has not attained 18 years of age; and

16 (C) with respect to whom—

17 (i) there is no parent or legal guard-
18 ian in the United States; or

19 (ii) no parent or legal guardian in the
20 United States is available to provide care
21 and physical custody.

1 **Subtitle F—General Immigration**
2 **Provisions**

3 **SEC. 471. ABOLISHMENT OF INS.**

4 (a) IN GENERAL.—The Immigration and Naturaliza-
5 tion Service of the Department of Justice is abolished.

6 (b) PROHIBITION.—The authority provided by sec-
7 tion 1502 may be used to reorganize functions or organi-
8 zational units within the Bureau of Border Security or the
9 Bureau of Citizenship and Immigration Services, but may
10 not be used to recombine the two bureaus into a single
11 agency or otherwise to combine, join, or consolidate func-
12 tions or organizational units of the two bureaus with each
13 other.

14 **SEC. 472. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**

15 (a) DEFINITIONS.—For purposes of this section—

16 (1) the term “employee” means an employee
17 (as defined by section 2105 of title 5, United States
18 Code) who—

19 (A) has completed at least 3 years of cur-
20 rent continuous service with 1 or more covered
21 entities; and

22 (B) is serving under an appointment with-
23 out time limitation;

1 but does not include any person under subpara-
2 graphs (A)–(G) of section 663(a)(2) of Public Law
3 104–208 (5 U.S.C. 5597 note);

4 (2) the term “covered entity” means—

5 (A) the Immigration and Naturalization
6 Service;

7 (B) the Bureau of Border Security of the
8 Department of Homeland Security; and

9 (C) the Bureau of Citizenship and Immi-
10 gration Services of the Department of Home-
11 land Security; and

12 (3) the term “transfer date” means the date on
13 which the transfer of functions specified under sec-
14 tion 441 takes effect.

15 (b) STRATEGIC RESTRUCTURING PLAN.—Before the
16 Attorney General or the Secretary obligates any resources
17 for voluntary separation incentive payments under this
18 section, such official shall submit to the appropriate com-
19 mittees of Congress a strategic restructuring plan, which
20 shall include—

21 (1) an organizational chart depicting the cov-
22 ered entities after their restructuring pursuant to
23 this Act;

1 (2) a summary description of how the authority
2 under this section will be used to help carry out that
3 restructuring; and

4 (3) the information specified in section
5 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597
6 note).

7 As used in the preceding sentence, the “appropriate com-
8 mittees of Congress” are the Committees on Appropria-
9 tions, Government Reform, and the Judiciary of the
10 House of Representatives, and the Committees on Appro-
11 priations, Governmental Affairs, and the Judiciary of the
12 Senate.

13 (c) **AUTHORITY.**—The Attorney General and the Sec-
14 retary may, to the extent necessary to help carry out their
15 respective strategic restructuring plan described in sub-
16 section (b), make voluntary separation incentive payments
17 to employees. Any such payment—

18 (1) shall be paid to the employee, in a lump
19 sum, after the employee has separated from service;

20 (2) shall be paid from appropriations or funds
21 available for the payment of basic pay of the em-
22 ployee;

23 (3) shall be equal to the lesser of—

1 (A) the amount the employee would be en-
2 titled to receive under section 5595(e) of title 5,
3 United States Code; or

4 (B) an amount not to exceed \$25,000, as
5 determined by the Attorney General or the Sec-
6 retary;

7 (4) may not be made except in the case of any
8 qualifying employee who voluntarily separates
9 (whether by retirement or resignation) before the
10 end of—

11 (A) the 3-month period beginning on the
12 date on which such payment is offered or made
13 available to such employee; or

14 (B) the 3-year period beginning on the
15 date of the enactment of this Act,

16 whichever occurs first;

17 (5) shall not be a basis for payment, and shall
18 not be included in the computation, of any other
19 type of Government benefit; and

20 (6) shall not be taken into account in deter-
21 mining the amount of any severance pay to which
22 the employee may be entitled under section 5595 of
23 title 5, United States Code, based on any other sepa-
24 ration.

1 (d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE
2 RETIREMENT FUND.—

3 (1) IN GENERAL.—In addition to any payments
4 which it is otherwise required to make, the Depart-
5 ment of Justice and the Department of Homeland
6 Security shall, for each fiscal year with respect to
7 which it makes any voluntary separation incentive
8 payments under this section, remit to the Office of
9 Personnel Management for deposit in the Treasury
10 of the United States to the credit of the Civil Service
11 Retirement and Disability Fund the amount re-
12 quired under paragraph (2).

13 (2) AMOUNT REQUIRED.—The amount required
14 under this paragraph shall, for any fiscal year, be
15 the amount under subparagraph (A) or (B), which-
16 ever is greater.

17 (A) FIRST METHOD.—The amount under
18 this subparagraph shall, for any fiscal year, be
19 equal to the minimum amount necessary to off-
20 set the additional costs to the retirement sys-
21 tems under title 5, United States Code (payable
22 out of the Civil Service Retirement and Dis-
23 ability Fund) resulting from the voluntary sepa-
24 ration of the employees described in paragraph

1 (3), as determined under regulations of the Of-
2 fice of Personnel Management.

3 (B) SECOND METHOD.—The amount
4 under this subparagraph shall, for any fiscal
5 year, be equal to 45 percent of the sum total
6 of the final basic pay of the employees described
7 in paragraph (3).

8 (3) COMPUTATIONS TO BE BASED ON SEPARA-
9 TIONS OCCURRING IN THE FISCAL YEAR IN-
10 VOLVED.—The employees described in this para-
11 graph are those employees who receive a voluntary
12 separation incentive payment under this section
13 based on their separating from service during the
14 fiscal year with respect to which the payment under
15 this subsection relates.

16 (4) FINAL BASIC PAY DEFINED.—In this sub-
17 section, the term “final basic pay” means, with re-
18 spect to an employee, the total amount of basic pay
19 which would be payable for a year of service by such
20 employee, computed using the employee’s final rate
21 of basic pay, and, if last serving on other than a
22 full-time basis, with appropriate adjustment there-
23 for.

24 (e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH
25 THE GOVERNMENT.—An individual who receives a vol-

1 untary separation incentive payment under this section
2 and who, within 5 years after the date of the separation
3 on which the payment is based, accepts any compensated
4 employment with the Government or works for any agency
5 of the Government through a personal services contract,
6 shall be required to pay, prior to the individual's first day
7 of employment, the entire amount of the incentive pay-
8 ment. Such payment shall be made to the covered entity
9 from which the individual separated or, if made on or after
10 the transfer date, to the Deputy Secretary or the Under
11 Secretary for Border and Transportation Security (for
12 transfer to the appropriate component of the Department
13 of Homeland Security, if necessary).

14 (f) EFFECT ON EMPLOYMENT LEVELS.—

15 (1) INTENDED EFFECT.—Voluntary separations
16 under this section are not intended to necessarily re-
17 duce the total number of full-time equivalent posi-
18 tions in any covered entity.

19 (2) USE OF VOLUNTARY SEPARATIONS.—A cov-
20 ered entity may redeploy or use the full-time equiva-
21 lent positions vacated by voluntary separations
22 under this section to make other positions available
23 to more critical locations or more critical occupa-
24 tions.

1 **SEC. 473. AUTHORITY TO CONDUCT A DEMONSTRATION**
2 **PROJECT RELATING TO DISCIPLINARY AC-**
3 **TION.**

4 (a) **IN GENERAL.**—The Attorney General and the
5 Secretary may each, during a period ending not later than
6 5 years after the date of the enactment of this Act, con-
7 duct a demonstration project for the purpose of deter-
8 mining whether one or more changes in the policies or pro-
9 cedures relating to methods for disciplining employees
10 would result in improved personnel management.

11 (b) **SCOPE.**—A demonstration project under this
12 section—

13 (1) may not cover any employees apart from
14 those employed in or under a covered entity; and

15 (2) shall not be limited by any provision of
16 chapter 43, 75, or 77 of title 5, United States Code.

17 (c) **PROCEDURES.**—Under the demonstration
18 project—

19 (1) the use of alternative means of dispute reso-
20 lution (as defined in section 571 of title 5, United
21 States Code) shall be encouraged, whenever appro-
22 priate; and

23 (2) each covered entity under the jurisdiction of
24 the official conducting the project shall be required
25 to provide for the expeditious, fair, and independent
26 review of any action to which section 4303 or sub-

1 chapter II of chapter 75 of such title 5 would other-
2 wise apply (except an action described in section
3 7512(5) of such title 5).

4 (d) ACTIONS INVOLVING DISCRIMINATION.—Not-
5 withstanding any other provision of this section, if, in the
6 case of any matter described in section 7702(a)(1)(B) of
7 title 5, United States Code, there is no judicially review-
8 able action under the demonstration project within 120
9 days after the filing of an appeal or other formal request
10 for review (referred to in subsection (c)(2)), an employee
11 shall be entitled to file a civil action to the same extent
12 and in the same manner as provided in section 7702(e)(1)
13 of such title 5 (in the matter following subparagraph (C)
14 thereof).

15 (e) CERTAIN EMPLOYEES.—Employees shall not be
16 included within any project under this section if such em-
17 ployees are—

18 (1) neither managers nor supervisors; and

19 (2) within a unit with respect to which a labor
20 organization is accorded exclusive recognition under
21 chapter 71 of title 5, United States Code.

22 Notwithstanding the preceding sentence, an aggrieved em-
23 ployee within a unit (referred to in paragraph (2)) may
24 elect to participate in a complaint procedure developed
25 under the demonstration project in lieu of any negotiated

1 grievance procedure and any statutory procedure (as such
2 term is used in section 7121 of such title 5).

3 (f) REPORTS.—The General Accounting Office shall
4 prepare and submit to the Committees on Government Re-
5 form and the Judiciary of the House of Representatives
6 and the Committees on Governmental Affairs and the Ju-
7 diciary of the Senate periodic reports on any demonstra-
8 tion project conducted under this section, such reports to
9 be submitted after the second and fourth years of its oper-
10 ation. Upon request, the Attorney General or the Sec-
11 retary shall furnish such information as the General Ac-
12 counting Office may require to carry out this subsection.

13 (g) DEFINITION.—In this section, the term “covered
14 entity” has the meaning given such term in section
15 472(a)(2).

16 **SEC. 474. SENSE OF CONGRESS.**

17 It is the sense of Congress that—

18 (1) the missions of the Bureau of Border Secu-
19 rity and the Bureau of Citizenship and Immigration
20 Services are equally important and, accordingly, they
21 each should be adequately funded; and

22 (2) the functions transferred under this subtitle
23 should not, after such transfers take effect, operate
24 at levels below those in effect prior to the enactment
25 of this Act.

1 **SEC. 475. DIRECTOR OF SHARED SERVICES.**

2 (a) IN GENERAL.—Within the Office of Deputy Sec-
3 retary, there shall be a Director of Shared Services.

4 (b) FUNCTIONS.—The Director of Shared Services
5 shall be responsible for the coordination of resources for
6 the Bureau of Border Security and the Bureau of Citizen-
7 ship and Immigration Services, including—

8 (1) information resources management, includ-
9 ing computer databases and information technology;

10 (2) records and file management; and

11 (3) forms management.

12 **SEC. 476. SEPARATION OF FUNDING.**

13 (a) IN GENERAL.—There shall be established sepa-
14 rate accounts in the Treasury of the United States for
15 appropriated funds and other deposits available for the
16 Bureau of Citizenship and Immigration Services and the
17 Bureau of Border Security.

18 (b) SEPARATE BUDGETS.—To ensure that the Bu-
19 reau of Citizenship and Immigration Services and the Bu-
20 reau of Border Security are funded to the extent necessary
21 to fully carry out their respective functions, the Director
22 of the Office of Management and Budget shall separate
23 the budget requests for each such entity.

24 (c) FEES.—Fees imposed for a particular service, ap-
25 plication, or benefit shall be deposited into the account es-

1 tablished under subsection (a) that is for the bureau with
2 jurisdiction over the function to which the fee relates.

3 (d) FEES NOT TRANSFERABLE.—No fee may be
4 transferred between the Bureau of Citizenship and Immi-
5 gration Services and the Bureau of Border Security for
6 purposes not authorized by section 286 of the Immigration
7 and Nationality Act (8 U.S.C. 1356).

8 **SEC. 477. REPORTS AND IMPLEMENTATION PLANS.**

9 (a) DIVISION OF FUNDS.—The Secretary, not later
10 than 120 days after the effective date of this Act, shall
11 submit to the Committees on Appropriations and the Judi-
12 ciary of the House of Representatives and of the Senate
13 a report on the proposed division and transfer of funds,
14 including unexpended funds, appropriations, and fees, be-
15 tween the Bureau of Citizenship and Immigration Services
16 and the Bureau of Border Security.

17 (b) DIVISION OF PERSONNEL.—The Secretary, not
18 later than 120 days after the effective date of this Act,
19 shall submit to the Committees on Appropriations and the
20 Judiciary of the House of Representatives and of the Sen-
21 ate a report on the proposed division of personnel between
22 the Bureau of Citizenship and Immigration Services and
23 the Bureau of Border Security.

24 (c) IMPLEMENTATION PLAN.—

1 (1) IN GENERAL.—The Secretary, not later
2 than 120 days after the effective date of this Act,
3 and every 6 months thereafter until the termination
4 of fiscal year 2005, shall submit to the Committees
5 on Appropriations and the Judiciary of the House of
6 Representatives and of the Senate an implementa-
7 tion plan to carry out this Act.

8 (2) CONTENTS.—The implementation plan
9 should include details concerning the separation of
10 the Bureau of Citizenship and Immigration Services
11 and the Bureau of Border Security, including the
12 following:

13 (A) Organizational structure, including the
14 field structure.

15 (B) Chain of command.

16 (C) Procedures for interaction among such
17 bureaus.

18 (D) Fraud detection and investigation.

19 (E) The processing and handling of re-
20 moval proceedings, including expedited removal
21 and applications for relief from removal.

22 (F) Recommendations for conforming
23 amendments to the Immigration and Nation-
24 ality Act (8 U.S.C. 1101 et seq.).

25 (G) Establishment of a transition team.

1 (H) Methods to phase in the costs of sepa-
2 rating the administrative support systems of
3 the Immigration and Naturalization Service in
4 order to provide for separate administrative
5 support systems for the Bureau of Citizenship
6 and Immigration Services and the Bureau of
7 Border Security.

8 (d) COMPTROLLER GENERAL STUDIES AND RE-
9 PORTS.—

10 (1) STATUS REPORTS ON TRANSITION.—Not
11 later than 18 months after the date on which the
12 transfer of functions specified under section 441
13 takes effect, and every 6 months thereafter, until
14 full implementation of this subtitle has been com-
15 pleted, the Comptroller General of the United States
16 shall submit to the Committees on Appropriations
17 and on the Judiciary of the House of Representa-
18 tives and the Senate a report containing the fol-
19 lowing:

20 (A) A determination of whether the trans-
21 fers of functions made by subtitles D and E
22 have been completed, and if a transfer of func-
23 tions has not taken place, identifying the rea-
24 sons why the transfer has not taken place.

1 (B) If the transfers of functions made by
2 subtitles D and E have been completed, an
3 identification of any issues that have arisen due
4 to the completed transfers.

5 (C) An identification of any issues that
6 may arise due to any future transfer of func-
7 tions.

8 (2) REPORT ON MANAGEMENT.—Not later than
9 4 years after the date on which the transfer of func-
10 tions specified under section 441 takes effect, the
11 Comptroller General of the United States shall sub-
12 mit to the Committees on Appropriations and on the
13 Judiciary of the House of Representatives and the
14 Senate a report, following a study, containing the
15 following:

16 (A) Determinations of whether the transfer
17 of functions from the Immigration and Natu-
18 ralization Service to the Bureau of Citizenship
19 and Immigration Services and the Bureau of
20 Border Security have improved, with respect to
21 each function transferred, the following:

22 (i) Operations.

23 (ii) Management, including account-
24 ability and communication.

25 (iii) Financial administration.

1 (iv) Recordkeeping, including informa-
2 tion management and technology.

3 (B) A statement of the reasons for the de-
4 terminations under subparagraph (A).

5 (C) Any recommendations for further im-
6 provements to the Bureau of Citizenship and
7 Immigration Services and the Bureau of Border
8 Security.

9 (3) REPORT ON FEES.—Not later than 1 year
10 after the date of the enactment of this Act, the
11 Comptroller General of the United States shall sub-
12 mit to the Committees on the Judiciary of the
13 House of Representatives and of the Senate a report
14 examining whether the Bureau of Citizenship and
15 Immigration Services is likely to derive sufficient
16 funds from fees to carry out its functions in the ab-
17 sence of appropriated funds.

18 **SEC. 478. IMMIGRATION FUNCTIONS.**

19 (a) ANNUAL REPORT.—

20 (1) IN GENERAL.—One year after the date of
21 the enactment of this Act, and each year thereafter,
22 the Secretary shall submit a report to the President,
23 to the Committees on the Judiciary and Government
24 Reform of the House of Representatives, and to the
25 Committees on the Judiciary and Government Af-

1 fairs of the Senate, on the impact the transfers
2 made by this subtitle has had on immigration func-
3 tions.

4 (2) MATTER INCLUDED.—The report shall ad-
5 dress the following with respect to the period cov-
6 ered by the report:

7 (A) The aggregate number of all immigra-
8 tion applications and petitions received, and
9 processed, by the Department;

10 (B) Region-by-region statistics on the ag-
11 gregate number of immigration applications and
12 petitions filed by an alien (or filed on behalf of
13 an alien) and denied, disaggregated by category
14 of denial and application or petition type.

15 (C) The quantity of backlogged immigra-
16 tion applications and petitions that have been
17 processed, the aggregate number awaiting proc-
18 essing, and a detailed plan for eliminating the
19 backlog.

20 (D) The average processing period for im-
21 migration applications and petitions,
22 disaggregated by application or petition type.

23 (E) The number and types of immigration-
24 related grievances filed with any official of the

1 Department of Justice, and if those grievances
2 were resolved.

3 (F) Plans to address grievances and im-
4 prove immigration services.

5 (G) Whether immigration-related fees were
6 used consistent with legal requirements regard-
7 ing such use.

8 (H) Whether immigration-related questions
9 conveyed by customers to the Department
10 (whether conveyed in person, by telephone, or
11 by means of the Internet) were answered effec-
12 tively and efficiently.

13 (b) SENSE OF CONGRESS REGARDING IMMIGRATION
14 SERVICES.—It is the sense of Congress that—

15 (1) the quality and efficiency of immigration
16 services rendered by the Federal Government should
17 be improved after the transfers made by this subtitle
18 take effect; and

19 (2) the Secretary should undertake efforts to
20 guarantee that concerns regarding the quality and
21 efficiency of immigration services are addressed after
22 such effective date.

1 **TITLE V—EMERGENCY**
2 **PREPAREDNESS AND RESPONSE**

3 **SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPARED-**
4 **NESS AND RESPONSE.**

5 There shall be in the Department a Directorate of
6 Emergency Preparedness and Response headed by an
7 Under Secretary for Emergency Preparedness and Re-
8 sponse.

9 **SEC. 502. RESPONSIBILITIES.**

10 The Secretary, acting through the Under Secretary
11 for Emergency Preparedness and Response, shall
12 include—

13 (1) helping to ensure the effectiveness of emer-
14 gency response providers to terrorist attacks, major
15 disasters, and other emergencies;

16 (2) with respect to the Nuclear Incident Re-
17 sponse Team (regardless of whether it is operating
18 as an organizational unit of the Department pursu-
19 ant to this title)—

20 (A) establishing standards and certifying
21 when those standards have been met;

22 (B) conducting joint and other exercises
23 and training and evaluating performance; and

24 (C) providing funds to the Department of
25 Energy and the Environmental Protection

1 Agency, as appropriate, for homeland security
2 planning, exercises and training, and equip-
3 ment;

4 (3) providing the Federal Government's re-
5 sponse to terrorist attacks and major disasters,
6 including—

7 (A) managing such response;

8 (B) directing the Domestic Emergency
9 Support Team, the Strategic National Stock-
10 pile, the National Disaster Medical System, and
11 (when operating as an organizational unit of
12 the Department pursuant to this title) the Nu-
13 clear Incident Response Team;

14 (C) overseeing the Metropolitan Medical
15 Response System; and

16 (D) coordinating other Federal response
17 resources in the event of a terrorist attack or
18 major disaster;

19 (4) aiding the recovery from terrorist attacks
20 and major disasters;

21 (5) building a comprehensive national incident
22 management system with Federal, State, and local
23 government personnel, agencies, and authorities, to
24 respond to such attacks and disasters;

1 (6) consolidating existing Federal Government
2 emergency response plans into a single, coordinated
3 national response plan; and

4 (7) developing comprehensive programs for de-
5 veloping interoperative communications technology,
6 and helping to ensure that emergency response pro-
7 viders acquire such technology.

8 **SEC. 503. FUNCTIONS TRANSFERRED.**

9 In accordance with title XV, there shall be trans-
10 ferred to the Secretary the functions, personnel, assets,
11 and liabilities of the following entities:

12 (1) The Federal Emergency Management Agen-
13 cy, including the functions of the Director of the
14 Federal Emergency Management Agency relating
15 thereto.

16 (2) The Integrated Hazard Information System
17 of the National Oceanic and Atmospheric Adminis-
18 tration, which shall be renamed “FIRESAT”.

19 (3) The National Domestic Preparedness Office
20 of the Federal Bureau of Investigation, including the
21 functions of the Attorney General relating thereto.

22 (4) The Domestic Emergency Support Teams
23 of the Department of Justice, including the func-
24 tions of the Attorney General relating thereto.

1 (5) The Office of Emergency Preparedness, the
2 National Disaster Medical System, and the Metro-
3 politan Medical Response System of the Department
4 of Health and Human Services, including the func-
5 tions of the Secretary of Health and Human Serv-
6 ices and the Assistant Secretary for Public Health
7 Emergency Preparedness relating thereto.

8 (6) The Strategic National Stockpile of the De-
9 partment of Health and Human Services, including
10 the functions of the Secretary of Health and Human
11 Services relating thereto.

12 **SEC. 504. NUCLEAR INCIDENT RESPONSE.**

13 (a) IN GENERAL.—At the direction of the Secretary
14 (in connection with an actual or threatened terrorist at-
15 tack, major disaster, or other emergency in the United
16 States), the Nuclear Incident Response Team shall oper-
17 ate as an organizational unit of the Department. While
18 so operating, the Nuclear Incident Response Team shall
19 be subject to the direction, authority, and control of the
20 Secretary.

21 (b) RULE OF CONSTRUCTION.—Nothing in this title
22 shall be construed to limit the ordinary responsibility of
23 the Secretary of Energy and the Administrator of the En-
24 vironmental Protection Agency for organizing, training,
25 equipping, and utilizing their respective entities in the Nu-

1 clear Incident Response Team, or (subject to the provi-
2 sions of this title) from exercising direction, authority, and
3 control over them when they are not operating as a unit
4 of the Department.

5 **SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED**
6 **ACTIVITIES.**

7 (a) IN GENERAL.—With respect to all public health-
8 related activities to improve State, local, and hospital pre-
9 paredness and response to chemical, biological, radio-
10 logical, and nuclear and other emerging terrorist threats
11 carried out by the Department of Health and Human
12 Services (including the Public Health Service), the Sec-
13 retary of Health and Human Services shall set priorities
14 and preparedness goals and further develop a coordinated
15 strategy for such activities in collaboration with the Sec-
16 retary.

17 (b) EVALUATION OF PROGRESS.—In carrying out
18 subsection (a), the Secretary of Health and Human Serv-
19 ices shall collaborate with the Secretary in developing spe-
20 cific benchmarks and outcome measurements for evalu-
21 ating progress toward achieving the priorities and goals
22 described in such subsection.

23 **SEC. 506. DEFINITION.**

24 In this title, the term “Nuclear Incident Response
25 Team” means a resource that includes—

1 (1) those entities of the Department of Energy
2 that perform nuclear or radiological emergency sup-
3 port functions (including accident response, search
4 response, advisory, and technical operations func-
5 tions), radiation exposure functions at the medical
6 assistance facility known as the Radiation Emer-
7 gency Assistance Center/Training Site (REAC/TS),
8 radiological assistance functions, and related func-
9 tions; and

10 (2) those entities of the Environmental Protec-
11 tion Agency that perform such support functions (in-
12 cluding radiological emergency response functions)
13 and related functions.

14 **SEC. 507. ROLE OF FEDERAL EMERGENCY MANAGEMENT**
15 **AGENCY.**

16 (a) IN GENERAL.—The functions of the Federal
17 Emergency Management Agency include the following:

18 (1) All functions and authorities prescribed by
19 the Robert T. Stafford Disaster Relief and Emer-
20 gency Assistance Act (42 U.S.C. 5121 et seq.).

21 (2) Carrying out its mission to reduce the loss
22 of life and property and protect the Nation from all
23 hazards by leading and supporting the Nation in a
24 comprehensive, risk-based emergency management
25 program—

1 (A) of mitigation, by taking sustained ac-
2 tions to reduce or eliminate long-term risk to
3 people and property from hazards and their ef-
4 fects;

5 (B) of planning for building the emergency
6 management profession to prepare effectively
7 for, mitigate against, respond to, and recover
8 from any hazard;

9 (C) of response, by conducting emergency
10 operations to save lives and property through
11 positioning emergency equipment and supplies,
12 through evacuating potential victims, through
13 providing food, water, shelter, and medical care
14 to those in need, and through restoring critical
15 public services;

16 (D) of recovery, by rebuilding communities
17 so individuals, businesses, and governments can
18 function on their own, return to normal life,
19 and protect against future hazards; and

20 (E) of increased efficiencies, by coordi-
21 nating efforts relating to mitigation, planning,
22 response, and recovery.

23 (b) FEDERAL RESPONSE PLAN.—

24 (1) ROLE OF FEMA.—Notwithstanding any
25 other provision of this Act, the Federal Emergency

1 Management Agency shall remain the lead agency
2 for the Federal Response Plan established under Ex-
3 ecutive Order 12148 (44 Fed. Reg. 43239) and Ex-
4 ecutive Order 12656 (53 Fed. Reg. 47491).

5 (2) REVISION OF RESPONSE PLAN.—Not later
6 than 60 days after the date of enactment of this
7 Act, the Director of the Federal Emergency Man-
8 agement Agency shall revise the Federal Response
9 Plan to reflect the establishment of and incorporate
10 the Department.

11 **SEC. 508. USE OF NATIONAL PRIVATE SECTOR NETWORKS**
12 **IN EMERGENCY RESPONSE.**

13 To the maximum extent practicable, the Secretary
14 shall use national private sector networks and infrastruc-
15 ture for emergency response to chemical, biological, radio-
16 logical, nuclear, or explosive disasters, and other major
17 disasters.

18 **SEC. 509. USE OF COMMERCIALY AVAILABLE TECH-**
19 **NOLOGY, GOODS, AND SERVICES.**

20 It is the sense of Congress that—

21 (1) the Secretary should, to the maximum ex-
22 tent possible, use off-the-shelf commercially devel-
23 oped technologies to ensure that the Department's
24 information technology systems allow the Depart-
25 ment to collect, manage, share, analyze, and dissemi-

1 nate information securely over multiple channels of
2 communication; and

3 (2) in order to further the policy of the United
4 States to avoid competing commercially with the pri-
5 vate sector, the Secretary should rely on commercial
6 sources to supply the goods and services needed by
7 the Department.

8 **TITLE VI—TREATMENT OF**
9 **CHARITABLE TRUSTS FOR**
10 **MEMBERS OF THE ARMED**
11 **FORCES OF THE UNITED**
12 **STATES AND OTHER GOVERN-**
13 **MENTAL ORGANIZATIONS**

14 **SEC. 601. TREATMENT OF CHARITABLE TRUSTS FOR MEM-**
15 **BERS OF THE ARMED FORCES OF THE**
16 **UNITED STATES AND OTHER GOVERN-**
17 **MENTAL ORGANIZATIONS.**

18 (a) FINDINGS.—Congress finds the following:

19 (1) Members of the Armed Forces of the
20 United States defend the freedom and security of
21 our Nation.

22 (2) Members of the Armed Forces of the
23 United States have lost their lives while battling the
24 evils of terrorism around the world.

1 (3) Personnel of the Central Intelligence Agen-
2 cy (CIA) charged with the responsibility of covert
3 observation of terrorists around the world are often
4 put in harm's way during their service to the United
5 States.

6 (4) Personnel of the Central Intelligence Agen-
7 cy have also lost their lives while battling the evils
8 of terrorism around the world.

9 (5) Employees of the Federal Bureau of Inves-
10 tigation (FBI) and other Federal agencies charged
11 with domestic protection of the United States put
12 their lives at risk on a daily basis for the freedom
13 and security of our Nation.

14 (6) United States military personnel, CIA per-
15 sonnel, FBI personnel, and other Federal agents in
16 the service of the United States are patriots of the
17 highest order.

18 (7) CIA officer Johnny Micheal Spann became
19 the first American to give his life for his country in
20 the War on Terrorism declared by President George
21 W. Bush following the terrorist attacks of Sep-
22 tember 11, 2001.

23 (8) Johnny Micheal Spann left behind a wife
24 and children who are very proud of the heroic ac-
25 tions of their patriot father.

1 (9) Surviving dependents of members of the
2 Armed Forces of the United States who lose their
3 lives as a result of terrorist attacks or military oper-
4 ations abroad receive a \$6,000 death benefit, plus a
5 small monthly benefit.

6 (10) The current system of compensating
7 spouses and children of American patriots is inequi-
8 table and needs improvement.

9 (b) DESIGNATION OF JOHNNY MICHEAL SPANN PA-
10 TRIOT TRUSTS.—Any charitable corporation, fund, foun-
11 dation, or trust (or separate fund or account thereof)
12 which otherwise meets all applicable requirements under
13 law with respect to charitable entities and meets the re-
14 quirements described in subsection (c) shall be eligible to
15 characterize itself as a “Johnny Micheal Spann Patriot
16 Trust”.

17 (c) REQUIREMENTS FOR THE DESIGNATION OF
18 JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—The re-
19 quirements described in this subsection are as follows:

20 (1) Not taking into account funds or donations
21 reasonably necessary to establish a trust, at least 85
22 percent of all funds or donations (including any
23 earnings on the investment of such funds or dona-
24 tions) received or collected by any Johnny Micheal
25 Spann Patriot Trust must be distributed to (or, if

1 placed in a private foundation, held in trust for) sur-
2 viving spouses, children, or dependent parents,
3 grandparents, or siblings of 1 or more of the fol-
4 lowing:

5 (A) members of the Armed Forces of the
6 United States;

7 (B) personnel, including contractors, of
8 elements of the intelligence community, as de-
9 fined in section 3(4) of the National Security
10 Act of 1947;

11 (C) employees of the Federal Bureau of
12 Investigation; and

13 (D) officers, employees, or contract em-
14 ployees of the United States Government,
15 whose deaths occur in the line of duty and arise out
16 of terrorist attacks, military operations, intelligence
17 operations, or law enforcement operations or acci-
18 dents connected with activities occurring after Sep-
19 tember 11, 2001, and related to domestic or foreign
20 efforts to curb international terrorism, including the
21 Authorization for Use of Military Force (Public Law
22 107–40; 115 Stat. 224).

23 (2) Other than funds or donations reasonably
24 necessary to establish a trust, not more than 15 per-
25 cent of all funds or donations (or 15 percent of an-

1 nual earnings on funds invested in a private founda-
2 tion) may be used for administrative purposes.

3 (3) No part of the net earnings of any Johnny
4 Micheal Spann Patriot Trust may inure to the ben-
5 efit of any individual based solely on the position of
6 such individual as a shareholder, an officer or em-
7 ployee of such Trust.

8 (4) None of the activities of any Johnny
9 Micheal Spann Patriot Trust shall be conducted in
10 a manner inconsistent with any law that prohibits
11 attempting to influence legislation.

12 (5) No Johnny Micheal Spann Patriot Trust
13 may participate in or intervene in any political cam-
14 paign on behalf of (or in opposition to) any can-
15 didate for public office, including by publication or
16 distribution of statements.

17 (6) Each Johnny Micheal Spann Patriot Trust
18 shall comply with the instructions and directions of
19 the Director of Central Intelligence, the Attorney
20 General, or the Secretary of Defense relating to the
21 protection of intelligence sources and methods, sen-
22 sitive law enforcement information, or other sensitive
23 national security information, including methods for
24 confidentially disbursing funds.

1 (7) Each Johnny Micheal Spann Patriot Trust
2 that receives annual contributions totaling more
3 than \$1,000,000 must be audited annually by an
4 independent certified public accounting firm. Such
5 audits shall be filed with the Internal Revenue Serv-
6 ice, and shall be open to public inspection, except
7 that the conduct, filing, and availability of the audit
8 shall be consistent with the protection of intelligence
9 sources and methods, of sensitive law enforcement
10 information, and of other sensitive national security
11 information.

12 (8) Each Johnny Micheal Spann Patriot Trust
13 shall make distributions to beneficiaries described in
14 paragraph (1) at least once every calendar year, be-
15 ginning not later than 12 months after the forma-
16 tion of such Trust, and all funds and donations re-
17 ceived and earnings not placed in a private founda-
18 tion dedicated to such beneficiaries must be distrib-
19 uted within 36 months after the end of the fiscal
20 year in which such funds, donations, and earnings
21 are received.

22 (9)(A) When determining the amount of a dis-
23 tribution to any beneficiary described in paragraph
24 (1), a Johnny Micheal Spann Patriot Trust should
25 take into account the amount of any collateral

1 source compensation that the beneficiary has re-
2 ceived or is entitled to receive as a result of the
3 death of an individual described in paragraph (1).

4 (B) Collateral source compensation includes all
5 compensation from collateral sources, including life
6 insurance, pension funds, death benefit programs,
7 and payments by Federal, State, or local govern-
8 ments related to the death of an individual described
9 in paragraph (1).

10 (d) TREATMENT OF JOHNNY MICHEAL SPANN PA-
11 TRIOT TRUSTS.—Each Johnny Micheal Spann Patriot
12 Trust shall refrain from conducting the activities de-
13 scribed in clauses (i) and (ii) of section 301(20)(A) of the
14 Federal Election Campaign Act of 1971 so that a general
15 solicitation of funds by an individual described in para-
16 graph (1) of section 323(e) of such Act will be permissible
17 if such solicitation meets the requirements of paragraph
18 (4)(A) of such section.

19 (e) NOTIFICATION OF TRUST BENEFICIARIES.—Not-
20 withstanding any other provision of law, and in a manner
21 consistent with the protection of intelligence sources and
22 methods and sensitive law enforcement information, and
23 other sensitive national security information, the Sec-
24 retary of Defense, the Director of the Federal Bureau of
25 Investigation, or the Director of Central Intelligence, or

1 their designees, as applicable, may forward information re-
2 ceived from an executor, administrator, or other legal rep-
3 resentative of the estate of a decedent described in sub-
4 paragraph (A), (B), (C), or (D) of subsection (c)(1), to
5 a Johnny Micheal Spann Patriot Trust on how to contact
6 individuals eligible for a distribution under subsection
7 (c)(1) for the purpose of providing assistance from such
8 Trust; provided that, neither forwarding nor failing to for-
9 ward any information under this subsection shall create
10 any cause of action against any Federal department, agen-
11 cy, officer, agent, or employee.

12 (f) REGULATIONS.—Not later than 90 days after the
13 date of enactment of this Act, the Secretary of Defense,
14 in coordination with the Attorney General, the Director
15 of the Federal Bureau of Investigation, and the Director
16 of Central Intelligence, shall prescribe regulations to carry
17 out this section.

18 **TITLE VII—MANAGEMENT**

19 **SEC. 701. UNDER SECRETARY FOR MANAGEMENT.**

20 (a) IN GENERAL.—The Secretary, acting through the
21 Under Secretary for Management, shall be responsible for
22 the management and administration of the Department,
23 including the following:

24 (1) The budget, appropriations, expenditures of
25 funds, accounting, and finance.

- 1 (2) Procurement.
- 2 (3) Human resources and personnel.
- 3 (4) Information technology and communications
4 systems.
- 5 (5) Facilities, property, equipment, and other
6 material resources.
- 7 (6) Security for personnel, information tech-
8 nology and communications systems, facilities, prop-
9 erty, equipment, and other material resources.
- 10 (7) Identification and tracking of performance
11 measures relating to the responsibilities of the De-
12 partment.
- 13 (8) Grants and other assistance management
14 programs.
- 15 (9) The transition and reorganization process,
16 to ensure an efficient and orderly transfer of func-
17 tions and personnel to the Department, including
18 the development of a transition plan.
- 19 (10) The conduct of internal audits and man-
20 agement analyses of the programs and activities of
21 the Department.
- 22 (11) Any other management duties that the
23 Secretary may designate.
- 24 (b) IMMIGRATION.—

1 (1) IN GENERAL.—In addition to the respon-
2 sibilities described in subsection (a), the Under Sec-
3 retary for Management shall be responsible for the
4 following:

5 (A) Maintenance of all immigration statis-
6 tical information of the Bureau of Border Secu-
7 rity and the Bureau of Citizenship and Immig-
8 ration Services. Such statistical information
9 shall include information and statistics of the
10 type contained in the publication entitled “Sta-
11 tistical Yearbook of the Immigration and Natu-
12 ralization Service” prepared by the Immigration
13 and Naturalization Service (as in effect imme-
14 diately before the date on which the transfer of
15 functions specified under section 441 takes ef-
16 fect), including region-by-region statistics on
17 the aggregate number of applications and peti-
18 tions filed by an alien (or filed on behalf of an
19 alien) and denied by such bureau, and the rea-
20 sons for such denials, disaggregated by category
21 of denial and application or petition type.

22 (B) Establishment of standards of reli-
23 ability and validity for immigration statistics
24 collected by such bureaus.

1 (2) TRANSFER OF FUNCTIONS.—In accordance
2 with title XV, there shall be transferred to the
3 Under Secretary for Management all functions per-
4 formed immediately before such transfer occurs by
5 the Statistics Branch of the Office of Policy and
6 Planning of the Immigration and Naturalization
7 Service with respect to the following programs:

8 (A) The Border Patrol program.

9 (B) The detention and removal program.

10 (C) The intelligence program.

11 (D) The investigations program.

12 (E) The inspections program.

13 (F) Adjudication of immigrant visa peti-
14 tions.

15 (G) Adjudication of naturalization peti-
16 tions.

17 (H) Adjudication of asylum and refugee
18 applications.

19 (I) Adjudications performed at service cen-
20 ters.

21 (J) All other adjudications performed by
22 the Immigration and Naturalization Service.

1 **SEC. 702. CHIEF FINANCIAL OFFICER.**

2 The Chief Financial Officer shall report to the Sec-
3 retary, or to another official of the Department, as the
4 Secretary may direct.

5 **SEC. 703. CHIEF INFORMATION OFFICER.**

6 The Chief Information Officer shall report to the Sec-
7 retary, or to another official of the Department, as the
8 Secretary may direct.

9 **SEC. 704. CHIEF HUMAN CAPITAL OFFICER.**

10 The Chief Human Capital Officer shall report to the
11 Secretary, or to another official of the Department, as the
12 Secretary may direct and shall ensure that all employees
13 of the Department are informed of their rights and rem-
14 edies under chapters 12 and 23 of title 5, United States
15 Code, by—

16 (1) participating in the 2302(c) Certification
17 Program of the Office of Special Counsel;

18 (2) achieving certification from the Office of
19 Special Counsel of the Department's compliance
20 with section 2302(c) of title 5, United States Code;
21 and

22 (3) informing Congress of such certification not
23 later than 24 months after the date of enactment of
24 this Act.

1 **SEC. 705. ESTABLISHMENT OF OFFICER FOR CIVIL RIGHTS**
2 **AND CIVIL LIBERTIES.**

3 (a) IN GENERAL.—The Secretary shall appoint in the
4 Department an Officer for Civil Rights and Civil Liberties,
5 who shall—

6 (1) review and assess information alleging
7 abuses of civil rights, civil liberties, and racial and
8 ethnic profiling by employees and officials of the De-
9 partment; and

10 (2) make public through the Internet, radio, tel-
11 evision, or newspaper advertisements information on
12 the responsibilities and functions of, and how to con-
13 tact, the Officer.

14 (b) REPORT.—The Secretary shall submit to
15 the President of the Senate, the Speaker of the
16 House of Representatives, and the appropriate com-
17 mittees and subcommittees of Congress on an an-
18 nual basis a report on the implementation of this
19 section, including the use of funds appropriated to
20 carry out this section, and detailing any allegations
21 of abuses described under subsection (a)(1) and any
22 actions taken by the Department in response to such
23 allegations.

1 **SEC. 706. CONSOLIDATION AND CO-LOCATION OF OFFICES.**

2 Not later than 1 year after the date of the enactment
3 of this Act, the Secretary shall develop and submit to Con-
4 gress a plan for consolidating and co-locating—

5 (1) any regional offices or field offices of agen-
6 cies that are transferred to the Department under
7 this Act, if such officers are located in the same mu-
8 nicipality; and

9 (2) portions of regional and field offices of
10 other Federal agencies, to the extent such offices
11 perform functions that are transferred to the Sec-
12 retary under this Act.

13 **TITLE VIII—COORDINATION**
14 **WITH NON-FEDERAL ENTI-**
15 **TIES; INSPECTOR GENERAL;**
16 **UNITED STATES SECRET**
17 **SERVICE; COAST GUARD;**
18 **GENERAL PROVISIONS**

19 **Subtitle A—Coordination with**
20 **Non-Federal Entities**

21 **SEC. 801. OFFICE FOR STATE AND LOCAL GOVERNMENT**
22 **COORDINATION.**

23 (a) **ESTABLISHMENT.**—There is established within
24 the Office of the Secretary the Office for State and Local
25 Government Coordination, to oversee and coordinate de-

1 partmental programs for and relationships with State and
2 local governments.

3 (b) RESPONSIBILITIES.—The Office established
4 under subsection (a) shall—

5 (1) coordinate the activities of the Department
6 relating to State and local government;

7 (2) assess, and advocate for, the resources
8 needed by State and local government to implement
9 the national strategy for combating terrorism;

10 (3) provide State and local government with
11 regular information, research, and technical support
12 to assist local efforts at securing the homeland; and

13 (4) develop a process for receiving meaningful
14 input from State and local government to assist the
15 development of the national strategy for combating
16 terrorism and other homeland security activities.

17 **Subtitle B—Inspector General**

18 **SEC. 811. AUTHORITY OF THE SECRETARY.**

19 (a) IN GENERAL.—Notwithstanding the last two sen-
20 tences of section 3(a) of the Inspector General Act of
21 1978, the Inspector General shall be under the authority,
22 direction, and control of the Secretary with respect to au-
23 dits or investigations, or the issuance of subpoenas, that
24 require access to sensitive information concerning—

1 (1) intelligence, counterintelligence, or
2 counterterrorism matters;

3 (2) ongoing criminal investigations or pro-
4 ceedings;

5 (3) undercover operations;

6 (4) the identity of confidential sources, includ-
7 ing protected witnesses;

8 (5) other matters the disclosure of which would,
9 in the Secretary's judgment, constitute a serious
10 threat to the protection of any person or property
11 authorized protection by section 3056 of title 18,
12 United States Code, section 202 of title 3 of such
13 Code, or any provision of the Presidential Protection
14 Assistance Act of 1976; or

15 (6) other matters the disclosure of which would,
16 in the Secretary's judgment, constitute a serious
17 threat to national security.

18 (b) PROHIBITION OF CERTAIN INVESTIGATIONS.—

19 With respect to the information described in subsection
20 (a), the Secretary may prohibit the Inspector General
21 from carrying out or completing any audit or investiga-
22 tion, or from issuing any subpoena, after such Inspector
23 General has decided to initiate, carry out, or complete
24 such audit or investigation or to issue such subpoena, if
25 the Secretary determines that such prohibition is nec-

1 essary to prevent the disclosure of any information de-
2 scribed in subsection (a), to preserve the national security,
3 or to prevent a significant impairment to the interests of
4 the United States.

5 (c) NOTIFICATION REQUIRED.—If the Secretary ex-
6 ercises any power under subsection (a) or (b), the Sec-
7 retary shall notify the Inspector General of the Depart-
8 ment in writing stating the reasons for such exercise.
9 Within 30 days after receipt of any such notice, the In-
10 spector General shall transmit a copy of such notice and
11 a written response thereto that includes—

12 (1) a statement as to whether the Inspector
13 General agrees or disagrees with such exercise; and

14 (2) the reasons for any disagreement, to the
15 President of the Senate and the Speaker of the
16 House of Representatives and to appropriate com-
17 mittees and subcommittees of Congress.

18 (d) ACCESS TO INFORMATION BY CONGRESS.—The
19 exercise of authority by the Secretary described in sub-
20 section (b) should not be construed as limiting the right
21 of Congress or any committee of Congress to access any
22 information it seeks.

23 (e) OVERSIGHT RESPONSIBILITY—The Inspector
24 General Act of 1978 (5 U.S.C. App.) is amended by insert-
25 ing after section 8I the following:

1 “SPECIAL PROVISIONS CONCERNING THE DEPARTMENT
2 OF HOMELAND SECURITY

3 “SEC. 8J. Notwithstanding any other provision of
4 law, in carrying out the duties and responsibilities speci-
5 fied in this Act, the Inspector General of the Department
6 of Homeland Security shall have oversight responsibility
7 for the internal investigations performed by the Office of
8 Internal Affairs of the United States Customs Service and
9 the Office of Inspections of the United States Secret Serv-
10 ice. The head of each such office shall promptly report
11 to the Inspector General the significant activities being
12 carried out by such office.”.

13 **SEC. 812. LAW ENFORCEMENT POWERS OF INSPECTOR**
14 **GENERAL AGENTS.**

15 (a) IN GENERAL.—Section 6 of the Inspector General
16 Act of 1978 (5 U.S.C. App.) is amended by adding at the
17 end the following:

18 “(e)(1) In addition to the authority otherwise pro-
19 vided by this Act, each Inspector General appointed under
20 section 3, any Assistant Inspector General for Investiga-
21 tions under such an Inspector General, and any special
22 agent supervised by such an Assistant Inspector General
23 may be authorized by the Attorney General to—

1 “(A) carry a firearm while engaged in official
2 duties as authorized under this Act or other statute,
3 or as expressly authorized by the Attorney General;

4 “(B) make an arrest without a warrant while
5 engaged in official duties as authorized under this
6 Act or other statute, or as expressly authorized by
7 the Attorney General, for any offense against the
8 United States committed in the presence of such In-
9 spector General, Assistant Inspector General, or
10 agent, or for any felony cognizable under the laws
11 of the United States if such Inspector General, As-
12 sistant Inspector General, or agent has reasonable
13 grounds to believe that the person to be arrested has
14 committed or is committing such felony; and

15 “(C) seek and execute warrants for arrest,
16 search of a premises, or seizure of evidence issued
17 under the authority of the United States upon prob-
18 able cause to believe that a violation has been com-
19 mitted.

20 “(2) The Attorney General may authorize exercise of
21 the powers under this subsection only upon an initial de-
22 termination that—

23 “(A) the affected Office of Inspector General is
24 significantly hampered in the performance of respon-

1 sibilities established by this Act as a result of the
2 lack of such powers;

3 “(B) available assistance from other law en-
4 forcement agencies is insufficient to meet the need
5 for such powers; and

6 “(C) adequate internal safeguards and manage-
7 ment procedures exist to ensure proper exercise of
8 such powers.

9 “(3) The Inspector General offices of the Department
10 of Commerce, Department of Education, Department of
11 Energy, Department of Health and Human Services, De-
12 partment of Homeland Security, Department of Housing
13 and Urban Development, Department of the Interior, De-
14 partment of Justice, Department of Labor, Department
15 of State, Department of Transportation, Department of
16 the Treasury, Department of Veterans Affairs, Agency for
17 International Development, Environmental Protection
18 Agency, Federal Deposit Insurance Corporation, Federal
19 Emergency Management Agency, General Services Admin-
20 istration, National Aeronautics and Space Administration,
21 Nuclear Regulatory Commission, Office of Personnel Man-
22 agement, Railroad Retirement Board, Small Business Ad-
23 ministration, Social Security Administration, and the Ten-
24 nessee Valley Authority are exempt from the requirement

1 of paragraph (2) of an initial determination of eligibility
2 by the Attorney General.

3 “(4) The Attorney General shall promulgate, and re-
4 vise as appropriate, guidelines which shall govern the exer-
5 cise of the law enforcement powers established under para-
6 graph (1).

7 “(5)(A) Powers authorized for an Office of Inspector
8 General under paragraph (1) may be rescinded or sus-
9 pended upon a determination by the Attorney General that
10 any of the requirements under paragraph (2) is no longer
11 satisfied or that the exercise of authorized powers by that
12 Office of Inspector General has not complied with the
13 guidelines promulgated by the Attorney General under
14 paragraph (4).

15 “(B) Powers authorized to be exercised by any indi-
16 vidual under paragraph (1) may be rescinded or suspended
17 with respect to that individual upon a determination by
18 the Attorney General that such individual has not com-
19 plied with guidelines promulgated by the Attorney General
20 under paragraph (4).

21 “(6) A determination by the Attorney General under
22 paragraph (2) or (5) shall not be reviewable in or by any
23 court.

24 “(7) To ensure the proper exercise of the law enforce-
25 ment powers authorized by this subsection, the Offices of

1 Inspector General described under paragraph (3) shall,
2 not later than 180 days after the date of enactment of
3 this subsection, collectively enter into a memorandum of
4 understanding to establish an external review process for
5 ensuring that adequate internal safeguards and manage-
6 ment procedures continue to exist within each Office and
7 within any Office that later receives an authorization
8 under paragraph (2). The review process shall be estab-
9 lished in consultation with the Attorney General, who shall
10 be provided with a copy of the memorandum of under-
11 standing that establishes the review process. Under the
12 review process, the exercise of the law enforcement powers
13 by each Office of Inspector General shall be reviewed peri-
14 odically by another Office of Inspector General or by a
15 committee of Inspectors General. The results of each re-
16 view shall be communicated in writing to the applicable
17 Inspector General and to the Attorney General.

18 “(8) No provision of this subsection shall limit the
19 exercise of law enforcement powers established under any
20 other statutory authority, including United States Mar-
21 shals Service special deputation.”.

22 (b) PROMULGATION OF INITIAL GUIDELINES.—

23 (1) DEFINITION.—In this subsection, the term
24 “memoranda of understanding” means the agree-
25 ments between the Department of Justice and the

1 Inspector General offices described under section
2 6(e)(3) of the Inspector General Act of 1978 (5
3 U.S.C. App) (as added by subsection (a) of this sec-
4 tion) that—

5 (A) are in effect on the date of enactment
6 of this Act; and

7 (B) authorize such offices to exercise au-
8 thority that is the same or similar to the au-
9 thority under section 6(e)(1) of such Act.

10 (2) IN GENERAL.—Not later than 180 days
11 after the date of enactment of this Act, the Attorney
12 General shall promulgate guidelines under section
13 6(e)(4) of the Inspector General Act of 1978 (5
14 U.S.C. App) (as added by subsection (a) of this sec-
15 tion) applicable to the Inspector General offices de-
16 scribed under section 6(e)(3) of that Act.

17 (3) MINIMUM REQUIREMENTS.—The guidelines
18 promulgated under this subsection shall include, at
19 a minimum, the operational and training require-
20 ments in the memoranda of understanding.

21 (4) NO LAPSE OF AUTHORITY.—The memo-
22 randa of understanding in effect on the date of en-
23 actment of this Act shall remain in effect until the
24 guidelines promulgated under this subsection take
25 effect.

1 (c) EFFECTIVE DATES.—

2 (1) IN GENERAL.—Subsection (a) shall take ef-
3 fect 180 days after the date of enactment of this
4 Act.

5 (2) INITIAL GUIDELINES.—Subsection (b) shall
6 take effect on the date of enactment of this Act.

7 **Subtitle C—United States Secret**
8 **Service**

9 **SEC. 821. FUNCTIONS TRANSFERRED.**

10 In accordance with title XV, there shall be trans-
11 ferred to the Secretary the functions, personnel, assets,
12 and obligations of the United States Secret Service, which
13 shall be maintained as a distinct entity within the Depart-
14 ment, including the functions of the Secretary of the
15 Treasury relating thereto.

16 **Subtitle D—Acquisitions**

17 **SEC. 831. RESEARCH AND DEVELOPMENT PROJECTS.**

18 (a) AUTHORITY.—During the 5-year period following
19 the effective date of this Act, the Secretary may carry out
20 a pilot program under which the Secretary may exercise
21 the following authorities:

22 (1) IN GENERAL.—When the Secretary carries
23 out basic, applied, and advanced research and devel-
24 opment projects, including the expenditure of funds
25 for such projects, the Secretary may exercise the

1 same authority (subject to the same limitations and
2 conditions) with respect to such research and
3 projects as the Secretary of Defense may exercise
4 under section 2371 of title 10, United States Code
5 (except for subsections (b) and (f)), after making a
6 determination that the use of a contract, grant, or
7 cooperative agreement for such project is not fea-
8 sible or appropriate. The annual report required
9 under subsection (b) of this section, as applied to
10 the Secretary by this paragraph, shall be submitted
11 to the President of the Senate and the Speaker of
12 the House of Representatives.

13 (2) PROTOTYPE PROJECTS.—The Secretary
14 may, under the authority of paragraph (1), carry out
15 prototype projects in accordance with the require-
16 ments and conditions provided for carrying out pro-
17 totype projects under section 845 of the National
18 Defense Authorization Act for Fiscal Year 1994
19 (Public Law 103–160). In applying the authorities
20 of that section 845, subsection (c) of that section
21 shall apply with respect to prototype projects under
22 this paragraph, and the Secretary shall perform the
23 functions of the Secretary of Defense under sub-
24 section (d) thereof.

1 (b) REPORT.—Not later than 2 years after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

2 (1) whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

3 (2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

4 (c) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Secretary may—

5 (1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

6 (2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

1 (d) DEFINITION OF NONTRADITIONAL GOVERNMENT
2 CONTRACTOR.—In this section, the term “nontraditional
3 Government contractor” has the same meaning as the
4 term “nontraditional defense contractor” as defined in
5 section 845(e) of the National Defense Authorization Act
6 for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C.
7 2371 note).

8 **SEC. 832. PERSONAL SERVICES.**

9 The Secretary—

10 (1) may procure the temporary or intermittent
11 services of experts or consultants (or organizations
12 thereof) in accordance with section 3109 of title 5,
13 United States Code; and

14 (2) may, whenever necessary due to an urgent
15 homeland security need, procure temporary (not to
16 exceed 1 year) or intermittent personal services, in-
17 cluding the services of experts or consultants (or or-
18 ganizations thereof), without regard to the pay limi-
19 tations of such section 3109.

20 **SEC. 833. SPECIAL STREAMLINED ACQUISITION AUTHOR-**
21 **ITY.**

22 (a) AUTHORITY.—

23 (1) IN GENERAL.—The Secretary may use the
24 authorities set forth in this section with respect to
25 any procurement made during the period beginning

1 on the effective date of this Act and ending Sep-
2 tember 30, 2007, if the Secretary determines in
3 writing that the mission of the Department (as de-
4 scribed in section 101) would be seriously impaired
5 without the use of such authorities.

6 (2) DELEGATION.—The authority to make the
7 determination described in paragraph (1) may not
8 be delegated by the Secretary to an officer of the
9 Department who is not appointed by the President
10 with the advice and consent of the Senate.

11 (3) NOTIFICATION.—Not later than the date
12 that is 7 days after the date of any determination
13 under paragraph (1), the Secretary shall submit to
14 the Committee on Government Reform of the House
15 of Representatives and the Committee on Govern-
16 mental Affairs of the Senate—

17 (A) notification of such determination; and

18 (B) the justification for such determination.

19 (b) INCREASED MICRO-PURCHASE THRESHOLD FOR
20 CERTAIN PROCUREMENTS.—

21 (1) IN GENERAL.—The Secretary may des-
22 ignate certain employees of the Department to make
23 procurements described in subsection (a) for which
24 in the administration of section 32 of the Office of
25 Federal Procurement Policy Act (41 U.S.C. 428) the

1 amount specified in subsections (c), (d), and (f) of
2 such section 32 shall be deemed to be \$7,500.

3 (2) NUMBER OF EMPLOYEES.—The number of
4 employees designated under paragraph (1) shall
5 be—

6 (A) fewer than the number of employees of
7 the Department who are authorized to make
8 purchases without obtaining competitive
9 quotations, pursuant to section 32(c) of the Of-
10 fice of Federal Procurement Policy Act (41
11 U.S.C. 428(c));

12 (B) sufficient to ensure the geographic dis-
13 persal of the availability of the use of the pro-
14 curement authority under such paragraph at lo-
15 cations reasonably considered to be potential
16 terrorist targets; and

17 (C) sufficiently limited to allow for the
18 careful monitoring of employees designated
19 under such paragraph.

20 (3) REVIEW.—Procurements made under the
21 authority of this subsection shall be subject to review
22 by a designated supervisor on not less than a month-
23 ly basis. The supervisor responsible for the review
24 shall be responsible for no more than 7 employees
25 making procurements under this subsection.

1 (c) SIMPLIFIED ACQUISITION PROCEDURES.—

2 (1) IN GENERAL.—With respect to a procure-
3 ment described in subsection (a), the Secretary may
4 deem the simplified acquisition threshold referred to
5 in section 4(11) of the Office of Federal Procure-
6 ment Policy Act (41 U.S.C. 403(11)) to be—

7 (A) in the case of a contract to be awarded
8 and performed, or purchase to be made, within
9 the United States, \$200,000; and

10 (B) in the case of a contract to be awarded
11 and performed, or purchase to be made, outside
12 of the United States, \$300,000.

13 (2) CONFORMING AMENDMENTS.—Section
14 18(c)(1) of the Office of Federal Procurement Policy
15 Act is amended—

16 (A) by striking “or” at the end of subpara-
17 graph (F);

18 (B) by striking the period at the end of
19 subparagraph (G) and inserting “; or”; and

20 (C) by adding at the end the following:

21 “(H) the procurement is by the Secretary of
22 Homeland Security pursuant to the special proce-
23 dures provided in section 833(c) of the Homeland
24 Security Act of 2002.”.

1 (d) APPLICATION OF CERTAIN COMMERCIAL ITEMS
2 AUTHORITIES.—

3 (1) IN GENERAL.—With respect to a procure-
4 ment described in subsection (a), the Secretary may
5 deem any item or service to be a commercial item
6 for the purpose of Federal procurement laws.

7 (2) LIMITATION.—The \$5,000,000 limitation
8 provided in section 31(a)(2) of the Office of Federal
9 Procurement Policy Act (41 U.S.C. 427(a)(2)) and
10 section 303(g)(1)(B) of the Federal Property and
11 Administrative Services Act of 1949 (41 U.S.C.
12 253(g)(1)(B)) shall be deemed to be \$7,500,000 for
13 purposes of property or services under the authority
14 of this subsection.

15 (3) CERTAIN AUTHORITY.—Authority under a
16 provision of law referred to in paragraph (2) that
17 expires under section 4202(e) of the Clinger-Cohen
18 Act of 1996 (divisions D and E of Public Law 104–
19 106; 10 U.S.C. 2304 note) shall, notwithstanding
20 such section, continue to apply for a procurement
21 described in subsection (a).

22 (e) REPORT.—Not later than 180 days after the end
23 of fiscal year 2005, the Comptroller General shall submit
24 to the Committee on Governmental Affairs of the Senate
25 and the Committee on Government Reform of the House

1 of Representatives a report on the use of the authorities
2 provided in this section. The report shall contain the fol-
3 lowing:

4 (1) An assessment of the extent to which prop-
5 erty and services acquired using authorities provided
6 under this section contributed to the capacity of the
7 Federal workforce to facilitate the mission of the
8 Department as described in section 101.

9 (2) An assessment of the extent to which prices
10 for property and services acquired using authorities
11 provided under this section reflected the best value.

12 (3) The number of employees designated by
13 each executive agency under subsection (b)(1).

14 (4) An assessment of the extent to which the
15 Department has implemented subsections (b)(2) and
16 (b)(3) to monitor the use of procurement authority
17 by employees designated under subsection (b)(1).

18 (5) Any recommendations of the Comptroller
19 General for improving the effectiveness of the imple-
20 mentation of the provisions of this section.

21 **SEC. 834. UNSOLICITED PROPOSALS.**

22 (a) REGULATIONS REQUIRED.—Within 1 year of the
23 date of enactment of this Act, the Federal Acquisition
24 Regulation shall be revised to include regulations with re-
25 gard to unsolicited proposals.

1 (b) CONTENT OF REGULATIONS.—The regulations
2 prescribed under subsection (a) shall require that before
3 initiating a comprehensive evaluation, an agency contact
4 point shall consider, among other factors, that the
5 proposal—

6 (1) is not submitted in response to a previously
7 published agency requirement; and

8 (2) contains technical and cost information for
9 evaluation and overall scientific, technical or socio-
10 economic merit, or cost-related or price-related fac-
11 tors.

12 **SEC. 835. PROHIBITION ON CONTRACTS WITH CORPORATE**
13 **EXPATRIATES.**

14 (a) IN GENERAL.—The Secretary may not enter into
15 any contract with a foreign incorporated entity which is
16 treated as an inverted domestic corporation under sub-
17 section (b).

18 (b) INVERTED DOMESTIC CORPORATION.—For pur-
19 poses of this section, a foreign incorporated entity shall
20 be treated as an inverted domestic corporation if, pursuant
21 to a plan (or a series of related transactions)—

22 (1) the entity completes after the date of enact-
23 ment of this Act, the direct or indirect acquisition of
24 substantially all of the properties held directly or in-
25 directly by a domestic corporation or substantially

1 all of the properties constituting a trade or business
2 of a domestic partnership;

3 (2) after the acquisition at least 80 percent of
4 the stock (by vote or value) of the entity is held—

5 (A) in the case of an acquisition with re-
6 spect to a domestic corporation, by former
7 shareholders of the domestic corporation by rea-
8 son of holding stock in the domestic corpora-
9 tion; or

10 (B) in the case of an acquisition with re-
11 spect to a domestic partnership, by former part-
12 ners of the domestic partnership by reason of
13 holding a capital or profits interest in the do-
14 mestic partnership; and

15 (3) the expanded affiliated group which after
16 the acquisition includes the entity does not have sub-
17 stantial business activities in the foreign country in
18 which or under the law of which the entity is created
19 or organized when compared to the total business
20 activities of such expanded affiliated group.

21 (c) DEFINITIONS AND SPECIAL RULES.—

22 (1) RULES FOR APPLICATION OF SUBSECTION
23 (b).—In applying subsection (b) for purposes of sub-
24 section (a), the following rules shall apply:

1 (A) CERTAIN STOCK DISREGARDED.—

2 There shall not be taken into account in deter-
3 mining ownership for purposes of subsection
4 (b)(2)—

5 (i) stock held by members of the ex-
6 panded affiliated group which includes the
7 foreign incorporated entity; or

8 (ii) stock of such entity which is sold
9 in a public offering related to the acquisi-
10 tion described in subsection (b)(1).

11 (B) PLAN DEEMED IN CERTAIN CASES.—If

12 a foreign incorporated entity acquires directly
13 or indirectly substantially all of the properties
14 of a domestic corporation or partnership during
15 the 4-year period beginning on the date which
16 is after the date of enactment of this Act and
17 which is 2 years before the ownership require-
18 ments of subsection (b)(2) are met, such ac-
19 tions shall be treated as pursuant to a plan.

20 (C) CERTAIN TRANSFERS DISREGARDED.—

21 The transfer of properties or liabilities (includ-
22 ing by contribution or distribution) shall be dis-
23 regarded if such transfers are part of a plan a
24 principal purpose of which is to avoid the pur-
25 poses of this section.

1 (D) SPECIAL RULE FOR RELATED PART-
2 NERSHIPS.—For purposes of applying sub-
3 section (b) to the acquisition of a domestic
4 partnership, except as provided in regulations,
5 all domestic partnerships which are under com-
6 mon control (within the meaning of section 482
7 of the Internal Revenue Code of 1986) shall be
8 treated as I partnership.

9 (E) TREATMENT OF CERTAIN RIGHTS.—
10 The Secretary shall prescribe such regulations
11 as may be necessary to—

12 (i) treat warrants, options, contracts
13 to acquire stock, convertible debt instru-
14 ments, and other similar interests as stock;
15 and

16 (ii) treat stock as not stock.

17 (2) EXPANDED AFFILIATED GROUP.—The term
18 “expanded affiliated group” means an affiliated
19 group as defined in section 1504(a) of the Internal
20 Revenue Code of 1986 (without regard to section
21 1504(b) of such Code), except that section 1504 of
22 such Code shall be applied by substituting “more
23 than 50 percent” for “at least 80 percent” each
24 place it appears.

1 (3) FOREIGN INCORPORATED ENTITY.—The
2 term “foreign incorporated entity” means any entity
3 which is, or but for subsection (b) would be, treated
4 as a foreign corporation for purposes of the Internal
5 Revenue Code of 1986.

6 (4) OTHER DEFINITIONS.—The terms “per-
7 son”, “domestic”, and “foreign” have the meanings
8 given such terms by paragraphs (1), (4), and (5) of
9 section 7701 (a) of the Internal Revenue Code of
10 1986, respectively.

11 (d) WAIVERS.—The Secretary shall waive subsection
12 (a) with respect to any specific contract if the Secretary
13 determines that the waiver is required in the interest of
14 homeland security, or to prevent the loss of any jobs in
15 the United States or prevent the Government from incur-
16 ring any additional costs that otherwise would not occur.

17 **Subtitle E—Human Resources**
18 **Management**

19 **SEC. 841. ESTABLISHMENT OF HUMAN RESOURCES MAN-**
20 **AGEMENT SYSTEM.**

21 (a) AUTHORITY.—

22 (1) SENSE OF CONGRESS.—It is the sense of
23 Congress that—

24 (A) it is extremely important that employ-
25 ees of the Department be allowed to participate

1 in a meaningful way in the creation of any
2 human resources management system affecting
3 them;

4 (B) such employees have the most direct
5 knowledge of the demands of their jobs and
6 have a direct interest in ensuring that their
7 human resources management system is condu-
8 cive to achieving optimal operational effi-
9 ciencies;

10 (C) the 21st century human resources
11 management system envisioned for the Depart-
12 ment should be one that benefits from the input
13 of its employees; and

14 (D) this collaborative effort will help se-
15 cure our homeland.

16 (2) IN GENERAL.—Subpart I of part III of title
17 5, United States Code, is amended by adding at the
18 end the following:

19 **“CHAPTER 97—DEPARTMENT OF**
20 **HOMELAND SECURITY**

“Sec.

“9701. Establishment of human resources management system.

21 **“§ 9701. Establishment of human resources manage-**
22 **ment system**

23 “(a) IN GENERAL.—Notwithstanding any other pro-
24 vision of this part, the Secretary of Homeland Security

1 may, in regulations prescribed jointly with the Director
2 of the Office of Personnel Management, establish, and
3 from time to time adjust, a human resources management
4 system for some or all of the organizational units of the
5 Department of Homeland Security.

6 “(b) SYSTEM REQUIREMENTS.—Any system estab-
7 lished under subsection (a) shall—

8 “(1) be flexible;

9 “(2) be contemporary;

10 “(3) not waive, modify, or otherwise affect—

11 “(A) the public employment principles of
12 merit and fitness set forth in section 2301, in-
13 cluding the principles of hiring based on merit,
14 fair treatment without regard to political affili-
15 ation or other nonmerit considerations, equal
16 pay for equal work, and protection of employees
17 against reprisal for whistleblowing;

18 “(B) any provision of section 2302, relat-
19 ing to prohibited personnel practices;

20 “(C)(i) any provision of law referred to in
21 section 2302(b)(1), (8), and (9); or

22 “(ii) any provision of law implementing
23 any provision of law referred to in section
24 2302(b)(1), (8), and (9) by—

1 “(I) providing for equal employment
2 opportunity through affirmative action; or

3 “(II) providing any right or remedy
4 available to any employee or applicant for
5 employment in the civil service;

6 “(D) any other provision of this part (as
7 described in subsection (c)); or

8 “(E) any rule or regulation prescribed
9 under any provision of law referred to in any of
10 the preceding subparagraphs of this paragraph;

11 “(4) ensure that employees may organize, bar-
12 gain collectively, and participate through labor orga-
13 nizations of their own choosing in decisions which
14 affect them, subject to any exclusion from coverage
15 or limitation on negotiability established by law; and

16 “(5) permit the use of a category rating system
17 for evaluating applicants for positions in the com-
18 petitive service.

19 “(c) OTHER NONWAIVABLE PROVISIONS.—The other
20 provisions of this part as referred to in subsection
21 (b)(3)(D), are (to the extent not otherwise specified in
22 subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

23 “(1) subparts A, B, E, G, and H of this part;
24 and

1 “(2) chapters 41, 45, 47, 55, 57, 59, 72, 73,
2 and 79, and this chapter.

3 “(d) LIMITATIONS RELATING TO PAY.—Nothing in
4 this section shall constitute authority—

5 “(1) to modify the pay of any employee who
6 serves in—

7 “(A) an Executive Schedule position under
8 subchapter II of chapter 53 of title 5, United
9 States Code; or

10 “(B) a position for which the rate of basic
11 pay is fixed in statute by reference to a section
12 or level under subchapter II of chapter 53 of
13 such title 5;

14 “(2) to fix pay for any employee or position at
15 an annual rate greater than the maximum amount
16 of cash compensation allowable under section 5307
17 of such title 5 in a year; or

18 “(3) to exempt any employee from the applica-
19 tion of such section 5307.

20 “(e) PROVISIONS TO ENSURE COLLABORATION WITH
21 EMPLOYEE REPRESENTATIVES.—

22 “(1) IN GENERAL.—In order to ensure that the
23 authority of this section is exercised in collaboration
24 with, and in a manner that ensures the participation
25 of employee representatives in the planning, develop-

1 ment, and implementation of any human resources
2 management system or adjustments to such system
3 under this section, the Secretary of Homeland Secu-
4 rity and the Director of the Office of Personnel
5 Management shall provide for the following:

6 “(A) NOTICE OF PROPOSAL.—The Sec-
7 retary and the Director shall, with respect to
8 any proposed system or adjustment—

9 “(i) provide to each employee rep-
10 resentative representing any employees
11 who might be affected, a written descrip-
12 tion of the proposed system or adjustment
13 (including the reasons why it is considered
14 necessary);

15 “(ii) give each representative 30 cal-
16 endar days (unless extraordinary cir-
17 cumstances require earlier action) to re-
18 view and make recommendations with re-
19 spect to the proposal; and

20 “(iii) give any recommendations re-
21 ceived from any such representatives under
22 clause (ii) full and fair consideration in de-
23 ciding whether or how to proceed with the
24 proposal.

1 “(B) PRE-IMPLEMENTATION CONGRES-
2 SIONAL NOTIFICATION, CONSULTATION, AND
3 MEDIATION.—Following receipt of recommenda-
4 tions, if any, from employee representatives
5 with respect to a proposal described in subpara-
6 graph (A), the Secretary and the Director shall
7 accept such modifications to the proposal in re-
8 sponse to the recommendations as they deter-
9 mine advisable and shall, with respect to any
10 parts of the proposal as to which they have not
11 accepted the recommendations—

12 “(i) notify Congress of those parts of
13 the proposal, together with the rec-
14 ommendations of employee representatives;

15 “(ii) meet and confer for not less than
16 30 calendar days with any representatives
17 who have made recommendations, in order
18 to attempt to reach agreement on whether
19 or how to proceed with those parts of the
20 proposal; and

21 “(iii) at the Secretary’s option, or if
22 requested by a majority of the employee
23 representatives who have made rec-
24 ommendations, use the services of the Fed-
25 eral Mediation and Conciliation Service

1 during such meet and confer period to fa-
2 cilitate the process of attempting to reach
3 agreement.

4 “(C) IMPLEMENTATION.—

5 “(i) Any part of the proposal as to
6 which the representatives do not make a
7 recommendation, or as to which their rec-
8 ommendations are accepted by the Sec-
9 retary and the Director, may be imple-
10 mented immediately.

11 “(ii) With respect to any parts of the
12 proposal as to which recommendations
13 have been made but not accepted by the
14 Secretary and the Director, at any time
15 after 30 calendar days have elapsed since
16 the initiation of the congressional notifica-
17 tion, consultation, and mediation proce-
18 dures set forth in subparagraph (B), if the
19 Secretary determines, in the Secretary’s
20 sole and unreviewable discretion, that fur-
21 ther consultation and mediation is unlikely
22 to produce agreement, the Secretary may
23 implement any or all of such parts, includ-
24 ing any modifications made in response to

1 the recommendations as the Secretary de-
2 termines advisable.

3 “(iii) The Secretary shall promptly
4 notify Congress of the implementation of
5 any part of the proposal and shall furnish
6 with such notice an explanation of the pro-
7 posal, any changes made to the proposal as
8 a result of recommendations from em-
9 ployee representatives, and of the reasons
10 why implementation is appropriate under
11 this subparagraph.

12 “(D) CONTINUING COLLABORATION.—If a
13 proposal described in subparagraph (A) is im-
14 plemented, the Secretary and the Director
15 shall—

16 “(i) develop a method for each em-
17 ployee representative to participate in any
18 further planning or development which
19 might become necessary; and

20 “(ii) give each employee representative
21 adequate access to information to make
22 that participation productive.

23 “(2) PROCEDURES.—Any procedures necessary
24 to carry out this subsection shall be established by
25 the Secretary and the Director jointly as internal

1 rules of departmental procedure which shall not be
2 subject to review. Such procedures shall include
3 measures to ensure—

4 “(A) in the case of employees within a unit
5 with respect to which a labor organization is ac-
6 corded exclusive recognition, representation by
7 individuals designated or from among individ-
8 uals nominated by such organization;

9 “(B) in the case of any employees who are
10 not within such a unit, representation by any
11 appropriate organization which represents a
12 substantial percentage of those employees or, if
13 none, in such other manner as may be appro-
14 priate, consistent with the purposes of the sub-
15 section;

16 “(C) the fair and expeditious handling of
17 the consultation and mediation process de-
18 scribed in subparagraph (B) of paragraph (1),
19 including procedures by which, if the number of
20 employee representatives providing rec-
21 ommendations exceeds 5, such representatives
22 select a committee or other unified representa-
23 tive with which the Secretary and Director may
24 meet and confer; and

1 “(D) the selection of representatives in a
2 manner consistent with the relative number of
3 employees represented by the organizations or
4 other representatives involved.

5 “(f) PROVISIONS RELATING TO APPELLATE PROCE-
6 DURES.—

7 (1) SENSE OF CONGRESS.—It is the sense of
8 Congress that—

9 “(A) employees of the Department are en-
10 titled to fair treatment in any appeals that they
11 bring in decisions relating to their employment;
12 and

13 “(B) in prescribing regulations for any
14 such appeals procedures, the Secretary and the
15 Director of the Office of Personnel
16 Management—

17 “(i) should ensure that employees of
18 the Department are afforded the protec-
19 tions of due process; and

20 “(ii) toward that end, should be re-
21 quired to consult with the Merit Systems
22 Protection Board before issuing any such
23 regulations.

1 “(2) REQUIREMENTS.—Any regulations under
2 this section which relate to any matters within the
3 purview of chapter 77—

4 “(A) shall be issued only after consultation
5 with the Merit Systems Protection Board;

6 “(B) shall ensure the availability of proce-
7 dures which shall—

8 “(i) be consistent with requirements
9 of due process; and

10 “(ii) provide, to the maximum extent
11 practicable, for the expeditious handling of
12 any matters involving the Department; and

13 “(C) shall modify procedures under chap-
14 ter 77 only insofar as such modifications are
15 designed to further the fair, efficient, and expe-
16 ditious resolution of matters involving the em-
17 ployees of the Department.

18 “(g) PROVISIONS RELATING TO LABOR-MANAGE-
19 MENT RELATIONS.—Nothing in this section shall be con-
20 strued as conferring authority on the Secretary of Home-
21 land Security to modify any of the provisions of section
22 842 of the Homeland Security Act of 2002.

23 “(h) SUNSET PROVISION.—Effective 5 years after
24 the conclusion of the transition period defined under sec-
25 tion 1501 of the Homeland Security Act of 2002, all au-

1 thority to issue regulations under this section (including
 2 regulations which would modify, supersede, or terminate
 3 any regulations previously issued under this section) shall
 4 cease to be available.”.

5 (3) TECHNICAL AND CONFORMING AMEND-
 6 MENT.—The table of chapters for part III of title 5,
 7 United States Code, is amended by adding at the
 8 end of the following:

“97. Department of Homeland Security 9701”.

9 (b) EFFECT ON PERSONNEL.—

10 (1) NONSEPARATION OR NONREDUCTION IN
 11 GRADE OR COMPENSATION OF FULL-TIME PER-
 12 SONNEL AND PART-TIME PERSONNEL HOLDING PER-
 13 MANENT POSITIONS.—Except as otherwise provided
 14 in this Act, the transfer under this Act of full-time
 15 personnel (except special Government employees)
 16 and part-time personnel holding permanent positions
 17 shall not cause any such employee to be separated
 18 or reduced in grade or compensation for 1 year after
 19 the date of transfer to the Department.

20 (2) POSITIONS COMPENSATED IN ACCORDANCE
 21 WITH EXECUTIVE SCHEDULE.—Any person who, on
 22 the day preceding such person’s date of transfer
 23 pursuant to this Act, held a position compensated in
 24 accordance with the Executive Schedule prescribed
 25 in chapter 53 of title 5, United States Code, and

1 who, without a break in service, is appointed in the
2 Department to a position having duties comparable
3 to the duties performed immediately preceding such
4 appointment shall continue to be compensated in
5 such new position at not less than the rate provided
6 for such position, for the duration of the service of
7 such person in such new position.

8 (3) COORDINATION RULE.—Any exercise of au-
9 thority under chapter 97 of title 5, United States
10 Code (as amended by subsection (a)), including
11 under any system established under such chapter,
12 shall be in conformance with the requirements of
13 this subsection.

14 **SEC. 842. LABOR-MANAGEMENT RELATIONS.**

15 (a) LIMITATION ON EXCLUSIONARY AUTHORITY.—

16 (1) IN GENERAL.—No agency or subdivision of
17 an agency which is transferred to the Department
18 pursuant to this Act shall be excluded from the cov-
19 erage of chapter 71 of title 5, United States Code,
20 as a result of any order issued under section
21 7103(b)(1) of such title 5 after June 18, 2002,
22 unless—

23 (A) the mission and responsibilities of the
24 agency (or subdivision) materially change; and

1 (B) a majority of the employees within
2 such agency (or subdivision) have as their pri-
3 mary duty intelligence, counterintelligence, or
4 investigative work directly related to terrorism
5 investigation.

6 (2) EXCLUSIONS ALLOWABLE.—Nothing in
7 paragraph (1) shall affect the effectiveness of any
8 order to the extent that such order excludes any por-
9 tion of an agency or subdivision of an agency as to
10 which—

11 (A) recognition as an appropriate unit has
12 never been conferred for purposes of chapter 71
13 of such title 5; or

14 (B) any such recognition has been revoked
15 or otherwise terminated as a result of a deter-
16 mination under subsection (b)(1).

17 (b) PROVISIONS RELATING TO BARGAINING
18 UNITS.—

19 (1) LIMITATION RELATING TO APPROPRIATE
20 UNITS.—Each unit which is recognized as an appro-
21 priate unit for purposes of chapter 71 of title 5,
22 United States Code, as of the day before the effec-
23 tive date of this Act (and any subdivision of any
24 such unit) shall, if such unit (or subdivision) is
25 transferred to the Department pursuant to this Act,

1 continue to be so recognized for such purposes,
2 unless—

3 (A) the mission and responsibilities of such
4 unit (or subdivision) materially change; and

5 (B) a majority of the employees within
6 such unit (or subdivision) have as their primary
7 duty intelligence, counterintelligence, or inves-
8 tigative work directly related to terrorism inves-
9 tigation.

10 (2) LIMITATION RELATING TO POSITIONS OR
11 EMPLOYEES.—No position or employee within a unit
12 (or subdivision of a unit) as to which continued rec-
13 ognition is given in accordance with paragraph (1)
14 shall be excluded from such unit (or subdivision), for
15 purposes of chapter 71 of such title 5, unless the
16 primary job duty of such position or employee—

17 (A) materially changes; and

18 (B) consists of intelligence, counterintel-
19 ligence, or investigative work directly related to
20 terrorism investigation.

21 In the case of any positions within a unit (or sub-
22 division) which are first established on or after the
23 effective date of this Act and any employees first ap-
24 pointed on or after such date, the preceding sentence
25 shall be applied disregarding subparagraph (A).

1 (c) WAIVER.—If the President determines that the
2 application of subsections (a), (b), and (d) would have a
3 substantial adverse impact on the ability of the Depart-
4 ment to protect homeland security, the President may
5 waive the application of such subsections 10 days after
6 the President has submitted to Congress a written expla-
7 nation of the reasons for such determination.

8 (d) COORDINATION RULE.—No other provision of
9 this Act or of any amendment made by this Act may be
10 construed or applied in a manner so as to limit, supersede,
11 or otherwise affect the provisions of this section, except
12 to the extent that it does so by specific reference to this
13 section.

14 (e) RULE OF CONSTRUCTION.—Nothing in section
15 9701(e) of title 5, United States Code, shall be considered
16 to apply with respect to any agency or subdivision of any
17 agency, which is excluded from the coverage of chapter
18 71 of title 5, United States Code, by virtue of an order
19 issued in accordance with section 7103(b) of such title and
20 the preceding provisions of this section (as applicable), or
21 to any employees of any such agency or subdivision or to
22 any individual or entity representing any such employees
23 or any representatives thereof.

1 **Subtitle F—Federal Emergency**
2 **Procurement Flexibility**

3 **SEC. 851. DEFINITION.**

4 In this subtitle, the term “executive agency” has the
5 meaning given that term under section 4(1) of the Office
6 of Federal Procurement Policy Act (41 U.S.C. 403(1)).

7 **SEC. 852. PROCUREMENTS FOR DEFENSE AGAINST OR RE-**
8 **COVERY FROM TERRORISM OR NUCLEAR, BI-**
9 **OLOGICAL, CHEMICAL, OR RADIOLOGICAL**
10 **ATTACK.**

11 The authorities provided in this subtitle apply to any
12 procurement of property or services by or for an executive
13 agency that, as determined by the head of the executive
14 agency, are to be used to facilitate defense against or re-
15 covery from terrorism or nuclear, biological, chemical, or
16 radiological attack, but only if a solicitation of offers for
17 the procurement is issued during the 1-year period begin-
18 ning on the date of the enactment of this Act.

19 **SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESH-**
20 **OLD FOR PROCUREMENTS IN SUPPORT OF**
21 **HUMANITARIAN OR PEACEKEEPING OPER-**
22 **ATIONS OR CONTINGENCY OPERATIONS.**

23 (a) **TEMPORARY THRESHOLD AMOUNTS.**—For a pro-
24 curement referred to in section 852 that is carried out
25 in support of a humanitarian or peacekeeping operation

1 or a contingency operation, the simplified acquisition
2 threshold definitions shall be applied as if the amount de-
3 termined under the exception provided for such an oper-
4 ation in those definitions were—

5 (1) in the case of a contract to be awarded and
6 performed, or purchase to be made, inside the
7 United States, \$200,000; or

8 (2) in the case of a contract to be awarded and
9 performed, or purchase to be made, outside the
10 United States, \$300,000.

11 (b) SIMPLIFIED ACQUISITION THRESHOLD DEFINI-
12 TIONS.—In this section, the term “simplified acquisition
13 threshold definitions” means the following:

14 (1) Section 4(11) of the Office of Federal Pro-
15 curement Policy Act (41 U.S.C. 403(11)).

16 (2) Section 309(d) of the Federal Property and
17 Administrative Services Act of 1949 (41 U.S.C.
18 259(d)).

19 (3) Section 2302(7) of title 10, United States
20 Code.

21 (c) SMALL BUSINESS RESERVE.—For a procurement
22 carried out pursuant to subsection (a), section 15(j) of the
23 Small Business Act (15 U.S.C. 644(j)) shall be applied
24 as if the maximum anticipated value identified therein is
25 equal to the amounts referred to in subsection (a).

1 **SEC. 854. INCREASED MICRO-PURCHASE THRESHOLD FOR**
2 **CERTAIN PROCUREMENTS.**

3 In the administration of section 32 of the Office of
4 Federal Procurement Policy Act (41 U.S.C. 428) with re-
5 spect to a procurement referred to in section 852, the
6 amount specified in subsections (c), (d), and (f) of such
7 section 32 shall be deemed to be \$7,500.

8 **SEC. 855. APPLICATION OF CERTAIN COMMERCIAL ITEMS**
9 **AUTHORITIES TO CERTAIN PROCUREMENTS.**

10 (a) AUTHORITY.—

11 (1) IN GENERAL.—The head of an executive
12 agency may apply the provisions of law listed in
13 paragraph (2) to a procurement referred to in sec-
14 tion 852 without regard to whether the property or
15 services are commercial items.

16 (2) COMMERCIAL ITEM LAWS.—The provisions
17 of law referred to in paragraph (1) are as follows:

18 (A) Sections 31 and 34 of the Office of
19 Federal Procurement Policy Act (41 U.S.C.
20 427, 430).

21 (B) Section 2304(g) of title 10, United
22 States Code.

23 (C) Section 303(g) of the Federal Property
24 and Administrative Services Act of 1949 (41
25 U.S.C. 253(g)).

1 (b) INAPPLICABILITY OF LIMITATION ON USE OF
2 SIMPLIFIED ACQUISITION PROCEDURES.—

3 (1) IN GENERAL.—The \$5,000,000 limitation
4 provided in section 31(a)(2) of the Office of Federal
5 Procurement Policy Act (41 U.S.C. 427(a)(2)), sec-
6 tion 2304(g)(1)(B) of title 10, United States Code,
7 and section 303(g)(1)(B) of the Federal Property
8 and Administrative Services Act of 1949 (41 U.S.C.
9 253(g)(1)(B)) shall not apply to purchases of prop-
10 erty or services to which any of the provisions of law
11 referred to in subsection (a) are applied under the
12 authority of this section.

13 (2) OMB GUIDANCE.—The Director of the Of-
14 fice of Management and Budget shall issue guidance
15 and procedures for the use of simplified acquisition
16 procedures for a purchase of property or services in
17 excess of \$5,000,000 under the authority of this sec-
18 tion.

19 (c) CONTINUATION OF AUTHORITY FOR SIMPLIFIED
20 PURCHASE PROCEDURES.—Authority under a provision of
21 law referred to in subsection (a)(2) that expires under sec-
22 tion 4202(e) of the Clinger-Cohen Act of 1996 (divisions
23 D and E of Public Law 104–106; 10 U.S.C. 2304 note)
24 shall, notwithstanding such section, continue to apply for

1 use by the head of an executive agency as provided in sub-
2 sections (a) and (b).

3 **SEC. 856. USE OF STREAMLINED PROCEDURES.**

4 (a) **REQUIRED USE.**—The head of an executive agen-
5 cy shall, when appropriate, use streamlined acquisition au-
6 thorities and procedures authorized by law for a procure-
7 ment referred to in section 852, including authorities and
8 procedures that are provided under the following provi-
9 sions of law:

10 (1) **FEDERAL PROPERTY AND ADMINISTRATIVE**
11 **SERVICES ACT OF 1949.**—In title III of the Federal
12 **Property and Administrative Services Act of 1949:**

13 (A) Paragraphs (1), (2), (6), and (7) of
14 subsection (c) of section 303 (41 U.S.C. 253),
15 relating to use of procedures other than com-
16 petitive procedures under certain circumstances
17 (subject to subsection (e) of such section).

18 (B) Section 303J (41 U.S.C. 253j), relat-
19 ing to orders under task and delivery order con-
20 tracts.

21 (2) **TITLE 10, UNITED STATES CODE.**—In chap-
22 **ter 137 of title 10, United States Code:**

23 (A) Paragraphs (1), (2), (6), and (7) of
24 subsection (c) of section 2304, relating to use
25 of procedures other than competitive procedures

1 under certain circumstances (subject to sub-
2 section (e) of such section).

3 (B) Section 2304c, relating to orders
4 under task and delivery order contracts.

5 (3) OFFICE OF FEDERAL PROCUREMENT POL-
6 ICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of
7 section 18(c) of the Office of Federal Procurement
8 Policy Act (41 U.S.C. 416(c)), relating to inapplica-
9 bility of a requirement for procurement notice.

10 (b) WAIVER OF CERTAIN SMALL BUSINESS THRESH-
11 OLD REQUIREMENTS.—Subclause (II) of section
12 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C.
13 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of
14 such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the
15 use of streamlined acquisition authorities and procedures
16 referred to in paragraphs (1)(A) and (2)(A) of subsection
17 (a) for a procurement referred to in section 852.

18 **SEC. 857. REVIEW AND REPORT BY COMPTROLLER GEN-**
19 **ERAL.**

20 (a) REQUIREMENTS.—Not later than March 31,
21 2004, the Comptroller General shall—

22 (1) complete a review of the extent to which
23 procurements of property and services have been
24 made in accordance with this subtitle; and

1 (2) submit a report on the results of the review
2 to the Committee on Governmental Affairs of the
3 Senate and the Committee on Government Reform
4 of the House of Representatives.

5 (b) CONTENT OF REPORT.—The report under sub-
6 section (a)(2) shall include the following matters:

7 (1) ASSESSMENT.—The Comptroller General’s
8 assessment of—

9 (A) the extent to which property and serv-
10 ices procured in accordance with this title have
11 contributed to the capacity of the workforce of
12 Federal Government employees within each ex-
13 ecutive agency to carry out the mission of the
14 executive agency; and

15 (B) the extent to which Federal Govern-
16 ment employees have been trained on the use of
17 technology.

18 (2) RECOMMENDATIONS.—Any recommenda-
19 tions of the Comptroller General resulting from the
20 assessment described in paragraph (1).

21 (c) CONSULTATION.—In preparing for the review
22 under subsection (a)(1), the Comptroller shall consult with
23 the Committee on Governmental Affairs of the Senate and
24 the Committee on Government Reform of the House of
25 Representatives on the specific issues and topics to be re-

1 viewed. The extent of coverage needed in areas such as
2 technology integration, employee training, and human
3 capital management, as well as the data requirements of
4 the study, shall be included as part of the consultation.

5 **SEC. 858. IDENTIFICATION OF NEW ENTRANTS INTO THE**
6 **FEDERAL MARKETPLACE.**

7 The head of each executive agency shall conduct mar-
8 ket research on an ongoing basis to identify effectively the
9 capabilities, including the capabilities of small businesses
10 and new entrants into Federal contracting, that are avail-
11 able in the marketplace for meeting the requirements of
12 the executive agency in furtherance of defense against or
13 recovery from terrorism or nuclear, biological, chemical,
14 or radiological attack. The head of the executive agency
15 shall, to the maximum extent practicable, take advantage
16 of commercially available market research methods, in-
17 cluding use of commercial databases, to carry out the re-
18 search.

19 **Subtitle G—Support Anti-terrorism**
20 **by Fostering Effective Tech-**
21 **nologies Act of 2002**

22 **SEC. 861. SHORT TITLE.**

23 This subtitle may be cited as the “Support Anti-ter-
24 rorism by Fostering Effective Technologies Act of 2002”
25 or the “SAFETY Act”.

1 **SEC. 862. ADMINISTRATION.**

2 (a) IN GENERAL.—The Secretary shall be responsible
3 for the administration of this subtitle.

4 (b) DESIGNATION OF QUALIFIED ANTI-TERRORISM
5 TECHNOLOGIES.—The Secretary may designate anti-ter-
6 rorism technologies that qualify for protection under the
7 system of risk management set forth in this subtitle in
8 accordance with criteria that shall include, but not be lim-
9 ited to, the following:

10 (1) Prior United States government use or
11 demonstrated substantial utility and effectiveness.

12 (2) Availability of the technology for immediate
13 deployment in public and private settings.

14 (3) Existence of extraordinarily large or ex-
15 traordinarily unquantifiable potential third party li-
16 ability risk exposure to the Seller or other provider
17 of such anti-terrorism technology.

18 (4) Substantial likelihood that such anti-ter-
19 rorism technology will not be deployed unless protec-
20 tions under the system of risk management provided
21 under this subtitle are extended.

22 (5) Magnitude of risk exposure to the public if
23 such anti-terrorism technology is not deployed.

24 (6) Evaluation of all scientific studies that can
25 be feasibly conducted in order to assess the capa-

1 bility of the technology to substantially reduce risks
2 of harm.

3 (7) Anti-terrorism technology that would be ef-
4 fective in facilitating the defense against acts of ter-
5 rorism, including technologies that prevent, defeat or
6 respond to such acts.

7 (c) REGULATIONS.—The Secretary may issue such
8 regulations, after notice and comment in accordance with
9 section 553 of title 5, United States, Code, as may be nec-
10 essary to carry out this subtitle.

11 **SEC. 863. LITIGATION MANAGEMENT.**

12 (a) FEDERAL CAUSE OF ACTION.—

13 (1) IN GENERAL.—There shall exist a Federal
14 cause of action for claims arising out of, relating to,
15 or resulting from an act of terrorism when qualified
16 anti-terrorism technologies have been deployed in de-
17 fense against or response or recovery from such act
18 and such claims result or may result in loss to the
19 Seller. The substantive law for decision in any such
20 action shall be derived from the law, including choice
21 of law principles, of the State in which such acts of
22 terrorism occurred, unless such law is inconsistent
23 with or preempted by Federal law. Such Federal
24 cause of action shall be brought only for claims for
25 injuries that are proximately caused by sellers that

1 provide qualified anti-terrorism technology to Fed-
2 eral and non-Federal government customers.

3 (2) JURISDICTION.—Such appropriate district
4 court of the United States shall have original and
5 exclusive jurisdiction over all actions for any claim
6 for loss of property, personal injury, or death arising
7 out of, relating to, or resulting from an act of ter-
8 rorism when qualified anti-terrorism technologies
9 have been deployed in defense against or response or
10 recovery from such act and such claims result or
11 may result in loss to the Seller.

12 (b) SPECIAL RULES.—In an action brought under
13 this section for damages the following provisions apply:

14 (1) PUNITIVE DAMAGES.—No punitive damages
15 intended to punish or deter, exemplary damages, or
16 other damages not intended to compensate a plain-
17 tiff for actual losses may be awarded, nor shall any
18 party be liable for interest prior to the judgment.

19 (2) NONECONOMIC DAMAGES.—

20 (A) IN GENERAL.—Noneconomic damages
21 may be awarded against a defendant only in an
22 amount directly proportional to the percentage
23 of responsibility of such defendant for the harm
24 to the plaintiff, and no plaintiff may recover

1 noneconomic damages unless the plaintiff suf-
2 fered physical harm.

3 (B) DEFINITION.—For purposes of sub-
4 paragraph (A), the term “noneconomic dam-
5 ages” means damages for losses for physical
6 and emotional pain, suffering, inconvenience,
7 physical impairment, mental anguish, disfigure-
8 ment, loss of enjoyment of life, loss of society
9 and companionship, loss of consortium, hedonic
10 damages, injury to reputation, and any other
11 nonpecuniary losses.

12 (c) COLLATERAL SOURCES.—Any recovery by a
13 plaintiff in an action under this section shall be reduced
14 by the amount of collateral source compensation, if any,
15 that the plaintiff has received or is entitled to receive as
16 a result of such acts of terrorism that result or may result
17 in loss to the Seller.

18 (d) GOVERNMENT CONTRACTOR DEFENSE.—

19 (1) IN GENERAL.—Should a product liability or
20 other lawsuit be filed for claims arising out of, relat-
21 ing to, or resulting from an act of terrorism when
22 qualified anti-terrorism technologies approved by the
23 Secretary, as provided in paragraphs (2) and (3) of
24 this subsection, have been deployed in defense
25 against or response or recovery from such act and

1 such claims result or may result in loss to the Seller,
2 there shall be a rebuttable presumption that the gov-
3 ernment contractor defense applies in such lawsuit.
4 This presumption shall only be overcome by evidence
5 showing that the Seller acted fraudulently or with
6 willful misconduct in submitting information to the
7 Secretary during the course of the Secretary's con-
8 sideration of such technology under this subsection.
9 This presumption of the government contractor de-
10 fense shall apply regardless of whether the claim
11 against the Seller arises from a sale of the product
12 to Federal Government or non-Federal Government
13 customers.

14 (2) EXCLUSIVE RESPONSIBILITY.—The Sec-
15 retary will be exclusively responsible for the review
16 and approval of anti-terrorism technology for pur-
17 poses of establishing a government contractor de-
18 fense in any product liability lawsuit for claims aris-
19 ing out of, relating to, or resulting from an act of
20 terrorism when qualified anti-terrorism technologies
21 approved by the Secretary, as provided in this para-
22 graph and paragraph (3), have been deployed in de-
23 fense against or response or recovery from such act
24 and such claims result or may result in loss to the
25 Seller. Upon the Seller's submission to the Secretary

1 for approval of anti-terrorism technology, the Sec-
2 retary will conduct a comprehensive review of the de-
3 sign of such technology and determine whether it
4 will perform as intended, conforms to the Seller's
5 specifications, and is safe for use as intended. The
6 Seller will conduct safety and hazard analyses on
7 such technology and will supply the Secretary with
8 all such information.

9 (3) CERTIFICATE.—For anti-terrorism tech-
10 nology reviewed and approved by the Secretary, the
11 Secretary will issue a certificate of conformance to
12 the Seller and place the anti-terrorism technology on
13 an Approved Product List for Homeland Security.

14 (e) EXCLUSION.—Nothing in this section shall in any
15 way limit the ability of any person to seek any form of
16 recovery from any person, government, or other entity
17 that—

18 (1) attempts to commit, knowingly participates
19 in, aids and abets, or commits any act of terrorism,
20 or any criminal act related to or resulting from such
21 act of terrorism; or

22 (2) participates in a conspiracy to commit any
23 such act of terrorism or any such criminal act.

24 **SEC. 864. RISK MANAGEMENT.**

25 (a) IN GENERAL.—

1 (1) LIABILITY INSURANCE REQUIRED.—Any
2 person or entity that sells or otherwise provides a
3 qualified anti-terrorism technology to Federal and
4 non-Federal government customers (“Seller”) shall
5 obtain liability insurance of such types and in such
6 amounts as shall be required in accordance with this
7 section and certified by the Secretary to satisfy oth-
8 erwise compensable third-party claims arising out of,
9 relating to, or resulting from an act of terrorism
10 when qualified anti-terrorism technologies have been
11 deployed in defense against or response or recovery
12 from such act.

13 (2) MAXIMUM AMOUNT.—For the total claims
14 related to 1 such act of terrorism, the Seller is not
15 required to obtain liability insurance of more than
16 the maximum amount of liability insurance reason-
17 ably available from private sources on the world
18 market at prices and terms that will not unreason-
19 ably distort the sales price of Seller’s anti-terrorism
20 technologies.

21 (3) SCOPE OF COVERAGE.—Liability insurance
22 obtained pursuant to this subsection shall, in addi-
23 tion to the Seller, protect the following, to the extent
24 of their potential liability for involvement in the
25 manufacture, qualification, sale, use, or operation of

1 qualified anti-terrorism technologies deployed in de-
2 fense against or response or recovery from an act of
3 terrorism:

4 (A) contractors, subcontractors, suppliers,
5 vendors and customers of the Seller.

6 (B) contractors, subcontractors, suppliers,
7 and vendors of the customer.

8 (4) THIRD PARTY CLAIMS.—Such liability in-
9 surance under this section shall provide coverage
10 against third party claims arising out of, relating to,
11 or resulting from the sale or use of anti-terrorism
12 technologies.

13 (b) RECIPROCAL WAIVER OF CLAIMS.—The Seller
14 shall enter into a reciprocal waiver of claims with its con-
15 tractors, subcontractors, suppliers, vendors and cus-
16 tomers, and contractors and subcontractors of the cus-
17 tomers, involved in the manufacture, sale, use or operation
18 of qualified anti-terrorism technologies, under which each
19 party to the waiver agrees to be responsible for losses, in-
20 cluding business interruption losses, that it sustains, or
21 for losses sustained by its own employees resulting from
22 an activity resulting from an act of terrorism when quali-
23 fied anti-terrorism technologies have been deployed in de-
24 fense against or response or recovery from such act.

1 (c) **EXTENT OF LIABILITY.**—Notwithstanding any
2 other provision of law, liability for all claims against a
3 Seller arising out of, relating to, or resulting from an act
4 of terrorism when qualified anti-terrorism technologies
5 have been deployed in defense against or response or re-
6 covery from such act and such claims result or may result
7 in loss to the Seller, whether for compensatory or punitive
8 damages or for contribution or indemnity, shall not be in
9 an amount greater than the limits of liability insurance
10 coverage required to be maintained by the Seller under
11 this section.

12 **SEC. 865. DEFINITIONS.**

13 For purposes of this subtitle, the following definitions
14 apply:

15 (1) **QUALIFIED ANTI-TERRORISM TECH-**
16 **NOLOGY.**—For purposes of this subtitle, the term
17 “qualified anti-terrorism technology” means any
18 product, equipment, service (including support serv-
19 ices), device, or technology (including information
20 technology) designed, developed, modified, or pro-
21 cured for the specific purpose of preventing, detect-
22 ing, identifying, or deterring acts of terrorism or
23 limiting the harm such acts might otherwise cause,
24 that is designated as such by the Secretary.

1 (2) ACT OF TERRORISM.—(A) The term “act of
2 terrorism” means any act that the Secretary deter-
3 mines meets the requirements under subparagraph
4 (B), as such requirements are further defined and
5 specified by the Secretary.

6 (B) REQUIREMENTS.—An act meets the re-
7 quirements of this subparagraph if the act—

8 (i) is unlawful;

9 (ii) causes harm to a person, property, or
10 entity, in the United States, or in the case of
11 a domestic United States air carrier or a
12 United States-flag vessel (or a vessel based
13 principally in the United States on which
14 United States income tax is paid and whose in-
15 surance coverage is subject to regulation in the
16 United States), in or outside the United States;
17 and

18 (iii) uses or attempts to use instrumental-
19 ities, weapons or other methods designed or in-
20 tended to cause mass destruction, injury or
21 other loss to citizens or institutions of the
22 United States.

23 (3) INSURANCE CARRIER.—The term “insur-
24 ance carrier” means any corporation, association, so-
25 ciety, order, firm, company, mutual, partnership, in-

1 dividual aggregation of individuals, or any other
2 legal entity that provides commercial property and
3 casualty insurance. Such term includes any affiliates
4 of a commercial insurance carrier.

5 (4) LIABILITY INSURANCE.—

6 (A) IN GENERAL.—The term “liability in-
7 surance” means insurance for legal liabilities
8 incurred by the insured resulting from—

9 (i) loss of or damage to property of
10 others;

11 (ii) ensuing loss of income or extra ex-
12 pense incurred because of loss of or dam-
13 age to property of others;

14 (iii) bodily injury (including) to per-
15 sons other than the insured or its employ-
16 ees; or

17 (iv) loss resulting from debt or default
18 of another.

19 (5) LOSS.—The term “loss” means death, bod-
20 ily injury, or loss of or damage to property, includ-
21 ing business interruption loss.

22 (6) NON-FEDERAL GOVERNMENT CUS-
23 TOMERS.—The term “non-Federal Government cus-
24 tomers” means any customer of a Seller that is not
25 an agency or instrumentality of the United States

1 Government with authority under Public Law 85-
2 804 to provide for indemnification under certain cir-
3 cumstances for third-party claims against its con-
4 tractors, including but not limited to State and local
5 authorities and commercial entities.

6 **Subtitle H—Miscellaneous** 7 **Provisions**

8 **SEC. 871. ADVISORY COMMITTEES.**

9 (a) IN GENERAL.—The Secretary may establish, ap-
10 point members of, and use the services of, advisory com-
11 mittees, as the Secretary may deem necessary. An advi-
12 sory committee established under this section may be ex-
13 empted by the Secretary from Public Law 92–463, but
14 the Secretary shall publish notice in the Federal Register
15 announcing the establishment of such a committee and
16 identifying its purpose and membership. Notwithstanding
17 the preceding sentence, members of an advisory committee
18 that is exempted by the Secretary under the preceding
19 sentence who are special Government employees (as that
20 term is defined in section 202 of title 18, United States
21 Code) shall be eligible for certifications under subsection
22 (b)(3) of section 208 of title 18, United States Code, for
23 official actions taken as a member of such advisory com-
24 mittee.

1 (b) **TERMINATION.**—Any advisory committee estab-
2 lished by the Secretary shall terminate 2 years after the
3 date of its establishment, unless the Secretary makes a
4 written determination to extend the advisory committee to
5 a specified date, which shall not be more than 2 years
6 after the date on which such determination is made. The
7 Secretary may make any number of subsequent extensions
8 consistent with this subsection.

9 **SEC. 872. REORGANIZATION.**

10 (a) **REORGANIZATION.**—The Secretary may allocate
11 or reallocate functions among the officers of the Depart-
12 ment, and may establish, consolidate, alter, or discontinue
13 organizational units within the Department, but only—

14 (1) pursuant to section 1502(b); or

15 (2) after the expiration of 60 days after pro-
16 viding notice of such action to the appropriate con-
17 gressional committees, which shall include an expla-
18 nation of the rationale for the action.

19 (b) **LIMITATIONS.**—

20 (1) **IN GENERAL.**—Authority under subsection
21 (a)(1) does not extend to the abolition of any agen-
22 cy, entity, organizational unit, program, or function
23 established or required to be maintained by this Act.

24 (2) **ABOLITIONS.**—Authority under subsection
25 (a)(2) does not extend to the abolition of any agen-

1 cy, entity, organizational unit, program, or function
2 established or required to be maintained by statute.

3 **SEC. 873. USE OF APPROPRIATED FUNDS.**

4 (a) DISPOSAL OF PROPERTY.—

5 (1) STRICT COMPLIANCE.—If specifically au-
6 thorized to dispose of real property in this or any
7 other Act, the Secretary shall exercise this authority
8 in strict compliance with section 204 of the Federal
9 Property and Administrative Services Act of 1949
10 (40 U.S.C. 485).

11 (2) DEPOSIT OF PROCEEDS.—The Secretary
12 shall deposit the proceeds of any exercise of property
13 disposal authority into the miscellaneous receipts of
14 the Treasury in accordance with section 3302(b) of
15 title 31, United States Code.

16 (b) GIFTS.—Gifts or donations of services or property
17 of or for the Department may not be accepted, used, or
18 disposed of unless specifically permitted in advance in an
19 appropriations Act and only under the conditions and for
20 the purposes specified in such appropriations Act.

21 (c) BUDGET REQUEST.—Under section 1105 of title
22 31, United States Code, the President shall submit to
23 Congress a detailed budget request for the Department
24 for fiscal year 2004, and for each subsequent fiscal year.

1 **SEC. 874. FUTURE YEAR HOMELAND SECURITY PROGRAM.**

2 (a) IN GENERAL.—Each budget request submitted to
3 Congress for the Department under section 1105 of title
4 31, United States Code, shall, at or about the same time,
5 be accompanied by a Future Years Homeland Security
6 Program.

7 (b) CONTENTS.—The Future Years Homeland Secu-
8 rity Program under subsection (a) shall be structured, and
9 include the same type of information and level of detail,
10 as the Future Years Defense Program submitted to Con-
11 gress by the Department of Defense under section 221
12 of title 10, United States Code.

13 (c) EFFECTIVE DATE.—This section shall take effect
14 with respect to the preparation and submission of the fis-
15 cal year 2005 budget request for the Department and for
16 any subsequent fiscal year, except that the first Future
17 Years Homeland Security Program shall be submitted not
18 later than 90 days after the Department's fiscal year 2005
19 budget request is submitted to Congress.

20 **SEC. 875. MISCELLANEOUS AUTHORITIES.**

21 (a) SEAL.—The Department shall have a seal, whose
22 design is subject to the approval of the President.

23 (b) PARTICIPATION OF MEMBERS OF THE ARMED
24 FORCES.—With respect to the Department, the Secretary
25 shall have the same authorities that the Secretary of
26 Transportation has with respect to the Department of

1 Transportation under section 324 of title 49, United
2 States Code.

3 (c) REDELEGATION OF FUNCTIONS.—Unless other-
4 wise provided in the delegation or by law, any function
5 delegated under this Act may be redelegated to any subor-
6 dinate.

7 **SEC. 876. MILITARY ACTIVITIES.**

8 Nothing in this Act shall confer upon the Secretary
9 any authority to engage in warfighting, the military de-
10 fense of the United States, or other military activities, nor
11 shall anything in this Act limit the existing authority of
12 the Department of Defense or the Armed Forces to engage
13 in warfighting, the military defense of the United States,
14 or other military activities.

15 **SEC. 877. REGULATORY AUTHORITY AND PREEMPTION.**

16 (a) REGULATORY AUTHORITY.—Except as otherwise
17 provided in sections 306(c), 862(c), and 1806(b), this Act
18 vests no new regulatory authority in the Secretary or any
19 other Federal official, and transfers to the Secretary or
20 another Federal official only such regulatory authority as
21 exists on the date of enactment of this Act within any
22 agency, program, or function transferred to the Depart-
23 ment pursuant to this Act, or that on such date of enact-
24 ment is exercised by another official of the executive
25 branch with respect to such agency, program, or function.

1 Any such transferred authority may not be exercised by
2 an official from whom it is transferred upon transfer of
3 such agency, program, or function to the Secretary or an-
4 other Federal official pursuant to this Act. This Act may
5 not be construed as altering or diminishing the regulatory
6 authority of any other executive agency, except to the ex-
7 tent that this Act transfers such authority from the agen-
8 cy.

9 (b) PREEMPTION OF STATE OR LOCAL LAW.—EX-
10 cept as otherwise provided in this Act, this Act preempts
11 no State or local law, except that any authority to preempt
12 State or local law vested in any Federal agency or official
13 transferred to the Department pursuant to this Act shall
14 be transferred to the Department effective on the date of
15 the transfer to the Department of that Federal agency or
16 official.

17 **SEC. 878. COUNTERNARCOTICS OFFICER.**

18 The Secretary shall appoint a senior official in the
19 Department to assume primary responsibility for coordi-
20 nating policy and operations within the Department and
21 between the Department and other Federal departments
22 and agencies with respect to interdicting the entry of ille-
23 gal drugs into the United States, and tracking and sev-
24 ering connections between illegal drug trafficking and ter-
25 rorism. Such official shall—

1 (1) ensure the adequacy of resources within the
2 Department for illicit drug interdiction; and

3 (2) serve as the United States Interdiction Co-
4 ordinator for the Director of National Drug Control
5 Policy.

6 **SEC. 879. OFFICE OF INTERNATIONAL AFFAIRS.**

7 (a) ESTABLISHMENT.—There is established within
8 the Office of the Secretary an Office of International Af-
9 fairs. The Office shall be headed by a Director, who shall
10 be a senior official appointed by the Secretary.

11 (b) DUTIES OF THE DIRECTOR.—The Director shall
12 have the following duties:

13 (1) To promote information and education ex-
14 change with nations friendly to the United States in
15 order to promote sharing of best practices and tech-
16 nologies relating to homeland security. Such ex-
17 change shall include the following:

18 (A) Exchange of information on research
19 and development on homeland security tech-
20 nologies.

21 (B) Joint training exercises of first re-
22 sponders.

23 (C) Exchange of expertise on terrorism
24 prevention, response, and crisis management.

1 (2) To identify areas for homeland security in-
2 formation and training exchange where the United
3 States has a demonstrated weakness and another
4 friendly nation or nations have a demonstrated ex-
5 pertise.

6 (3) To plan and undertake international con-
7 ferences, exchange programs, and training activities.

8 (4) To manage international activities within
9 the Department in coordination with other Federal
10 officials with responsibility for counter-terrorism
11 matters.

12 **SEC. 880. PROHIBITION OF THE TERRORISM INFORMATION**
13 **AND PREVENTION SYSTEM.**

14 Any and all activities of the Federal Government to
15 implement the proposed component program of the Citizen
16 Corps known as Operation TIPS (Terrorism Information
17 and Prevention System) are hereby prohibited.

18 **SEC. 881. REVIEW OF PAY AND BENEFIT PLANS.**

19 Notwithstanding any other provision of this Act, the
20 Secretary shall, in consultation with the Director of the
21 Office of Personnel Management, review the pay and ben-
22 efit plans of each agency whose functions are transferred
23 under this Act to the Department and, within 90 days
24 after the date of enactment, submit a plan to the Presi-
25 dent of the Senate and the Speaker of the House of Rep-

1 representatives and the appropriate committees and sub-
2 committees of Congress, for ensuring, to the maximum ex-
3 tent practicable, the elimination of disparities in pay and
4 benefits throughout the Department, especially among law
5 enforcement personnel, that are inconsistent with merit
6 system principles set forth in section 2301 of title 5,
7 United States Code.

8 **SEC. 882. OFFICE FOR NATIONAL CAPITAL REGION CO-**
9 **ORDINATION.**

10 (a) ESTABLISHMENT.—

11 (1) IN GENERAL.—There is established within
12 the Office of the Secretary the Office of National
13 Capital Region Coordination, to oversee and coordi-
14 nate Federal programs for and relationships with
15 State, local, and regional authorities in the National
16 Capital Region, as defined under section 2674(f)(2)
17 of title 10, United States Code.

18 (2) DIRECTOR.—The Office established under
19 paragraph (1) shall be headed by a Director, who
20 shall be appointed by the Secretary.

21 (3) COOPERATION.—The Secretary shall co-
22 operate with the Mayor of the District of Columbia,
23 the Governors of Maryland and Virginia, and other
24 State, local, and regional officers in the National
25 Capital Region to integrate the District of Columbia,

1 Maryland, and Virginia into the planning, coordina-
2 tion, and execution of the activities of the Federal
3 Government for the enhancement of domestic pre-
4 paredness against the consequences of terrorist at-
5 tacks.

6 (b) RESPONSIBILITIES.—The Office established
7 under subsection (a)(1) shall—

8 (1) coordinate the activities of the Department
9 relating to the National Capital Region, including
10 cooperation with the Office for State and Local Gov-
11 ernment Coordination;

12 (2) assess, and advocate for, the resources
13 needed by State, local, and regional authorities in
14 the National Capital Region to implement efforts to
15 secure the homeland;

16 (3) provide State, local, and regional authorities
17 in the National Capital Region with regular informa-
18 tion, research, and technical support to assist the ef-
19 forts of State, local, and regional authorities in the
20 National Capital Region in securing the homeland;

21 (4) develop a process for receiving meaningful
22 input from State, local, and regional authorities and
23 the private sector in the National Capital Region to
24 assist in the development of the homeland security
25 plans and activities of the Federal Government;

1 (5) coordinate with Federal agencies in the Na-
2 tional Capital Region on terrorism preparedness, to
3 ensure adequate planning, information sharing,
4 training, and execution of the Federal role in domes-
5 tic preparedness activities;

6 (6) coordinate with Federal, State, local, and
7 regional agencies, and the private sector in the Na-
8 tional Capital Region on terrorism preparedness to
9 ensure adequate planning, information sharing,
10 training, and execution of domestic preparedness ac-
11 tivities among these agencies and entities; and

12 (7) serve as a liaison between the Federal Gov-
13 ernment and State, local, and regional authorities,
14 and private sector entities in the National Capital
15 Region to facilitate access to Federal grants and
16 other programs.

17 (c) ANNUAL REPORT.—The Office established under
18 subsection (a) shall submit an annual report to Congress
19 that includes—

20 (1) the identification of the resources required
21 to fully implement homeland security efforts in the
22 National Capital Region;

23 (2) an assessment of the progress made by the
24 National Capital Region in implementing homeland
25 security efforts; and

1 (3) recommendations to Congress regarding the
2 additional resources needed to fully implement
3 homeland security efforts in the National Capital
4 Region.

5 (d) LIMITATION.—Nothing contained in this section
6 shall be construed as limiting the power of State and local
7 governments.

8 **SEC. 883. REQUIREMENT TO COMPLY WITH LAWS PRO-**
9 **TECTING EQUAL EMPLOYMENT OPPOR-**
10 **TUNITY AND PROVIDING WHISTLEBLOWER**
11 **PROTECTIONS.**

12 Nothing in this Act shall be construed as exempting
13 the Department from requirements applicable with respect
14 to executive agencies—

15 (1) to provide equal employment protection for
16 employees of the Department (including pursuant to
17 the provisions in section 2302(b)(1) of title 5,
18 United States Code, and the Notification and Fed-
19 eral Employee Antidiscrimination and Retaliation
20 Act of 2002 (Pub. L. 107–174)); or

21 (2) to provide whistleblower protections for em-
22 ployees of the Department (including pursuant to
23 the provisions in section 2302(b)(8) and (9) of such
24 title and the Notification and Federal Employee
25 Antidiscrimination and Retaliation Act of 2002).

1 **SEC. 884. FEDERAL LAW ENFORCEMENT TRAINING CEN-**
2 **TER.**

3 (a) IN GENERAL.—The transfer of an authority or
4 an agency under this Act to the Department of Homeland
5 Security does not affect training agreements already en-
6 tered into with the Federal Law Enforcement Training
7 Center with respect to the training of personnel to carry
8 out that authority or the duties of that transferred agency.

9 (b) CONTINUITY OF OPERATIONS.—All activities of
10 the Federal Law Enforcement Training Center trans-
11 ferred to the Department of Homeland Security under this
12 Act shall continue to be carried out at the locations such
13 activities were carried out before such transfer.

14 **SEC. 885. JOINT INTERAGENCY TASK FORCE.**

15 (a) ESTABLISHMENT.—The Secretary may establish
16 and operate a permanent Joint Interagency Homeland Se-
17 curity Task Force composed of representatives from mili-
18 tary and civilian agencies of the United States Govern-
19 ment for the purposes of anticipating terrorist threats
20 against the United States and taking appropriate actions
21 to prevent harm to the United States.

22 (b) STRUCTURE.—It is the sense of Congress that the
23 Secretary should model the Joint Interagency Homeland
24 Security Task Force on the approach taken by the Joint
25 Interagency Task Forces for drug interdiction at Key

1 West, Florida and Alameda, California, to the maximum
2 extent feasible and appropriate.

3 **SEC. 886. SENSE OF CONGRESS REAFFIRMING THE CONTIN-**
4 **UED IMPORTANCE AND APPLICABILITY OF**
5 **THE POSSE COMITATUS ACT.**

6 (a) FINDINGS.—Congress finds the following:

7 (1) Section 1385 of title 18, United States
8 Code (commonly known as the “Posse Comitatus
9 Act”), prohibits the use of the Armed Forces as a
10 posse comitatus to execute the laws except in cases
11 and under circumstances expressly authorized by the
12 Constitution or Act of Congress.

13 (2) Enacted in 1878, the Posse Comitatus Act
14 was expressly intended to prevent United States
15 Marshals, on their own initiative, from calling on the
16 Army for assistance in enforcing Federal law.

17 (3) The Posse Comitatus Act has served the
18 Nation well in limiting the use of the Armed Forces
19 to enforce the law.

20 (4) Nevertheless, by its express terms, the
21 Posse Comitatus Act is not a complete barrier to the
22 use of the Armed Forces for a range of domestic
23 purposes, including law enforcement functions, when
24 the use of the Armed Forces is authorized by Act of
25 Congress or the President determines that the use of

1 the Armed Forces is required to fulfill the Presi-
2 dent's obligations under the Constitution to respond
3 promptly in time of war, insurrection, or other seri-
4 ous emergency.

5 (5) Existing laws, including chapter 15 of title
6 10, United States Code (commonly known as the
7 "Insurrection Act"), and the Robert T. Stafford
8 Disaster Relief and Emergency Assistance Act (42
9 U.S.C. 5121 et seq.), grant the President broad
10 powers that may be invoked in the event of domestic
11 emergencies, including an attack against the Nation
12 using weapons of mass destruction, and these laws
13 specifically authorize the President to use the Armed
14 Forces to help restore public order.

15 (b) SENSE OF CONGRESS.—Congress reaffirms the
16 continued importance of section 1385 of title 18, United
17 States Code, and it is the sense of Congress that nothing
18 in this Act should be construed to alter the applicability
19 of such section to any use of the Armed Forces as a posse
20 comitatus to execute the laws.

21 **SEC. 887. COORDINATION WITH THE DEPARTMENT OF**
22 **HEALTH AND HUMAN SERVICES UNDER THE**
23 **PUBLIC HEALTH SERVICE ACT.**

24 (a) IN GENERAL.—The annual Federal response plan
25 developed by the Department shall be consistent with sec-

1 tion 319 of the Public Health Service Act (42 U.S.C.
2 247d).

3 (b) DISCLOSURES AMONG RELEVANT AGENCIES.—

4 (1) IN GENERAL.—Full disclosure among rel-
5 evant agencies shall be made in accordance with this
6 subsection.

7 (2) PUBLIC HEALTH EMERGENCY.—During the
8 period in which the Secretary of Health and Human
9 Services has declared the existence of a public health
10 emergency under section 319(a) of the Public
11 Health Service Act (42 U.S.C. 247d(a)), the Sec-
12 retary of Health and Human Services shall keep rel-
13 evant agencies, including the Department of Home-
14 land Security, the Department of Justice, and the
15 Federal Bureau of Investigation, fully and currently
16 informed.

17 (3) POTENTIAL PUBLIC HEALTH EMER-
18 GENCY.—In cases involving, or potentially involving,
19 a public health emergency, but in which no deter-
20 mination of an emergency by the Secretary of
21 Health and Human Services under section 319(a) of
22 the Public Health Service Act (42 U.S.C. 247d(a)),
23 has been made, all relevant agencies, including the
24 Department of Homeland Security, the Department
25 of Justice, and the Federal Bureau of Investigation,

1 shall keep the Secretary of Health and Human Serv-
2 ices and the Director of the Centers for Disease
3 Control and Prevention fully and currently informed.

4 **SEC. 888. PRESERVING COAST GUARD MISSION PERFORM-**
5 **ANCE.**

6 (a) DEFINITIONS.—In this section:

7 (1) NON-HOMELAND SECURITY MISSIONS.—The
8 term “non-homeland security missions” means the
9 following missions of the Coast Guard:

10 (A) Marine safety.

11 (B) Search and rescue.

12 (C) Aids to navigation.

13 (D) Living marine resources (fisheries law
14 enforcement).

15 (E) Marine environmental protection.

16 (F) Ice operations.

17 (2) HOMELAND SECURITY MISSIONS.—The
18 term “homeland security missions” means the fol-
19 lowing missions of the Coast Guard:

20 (A) Ports, waterways and coastal security.

21 (B) Drug interdiction.

22 (C) Migrant interdiction.

23 (D) Defense readiness.

24 (E) Other law enforcement.

1 (b) TRANSFER.—There are transferred to the De-
2 partment the authorities, functions, personnel, and assets
3 of the Coast Guard, which shall be maintained as a dis-
4 tinct entity within the Department, including the authori-
5 ties and functions of the Secretary of Transportation re-
6 lating thereto.

7 (c) MAINTENANCE OF STATUS OF FUNCTIONS AND
8 ASSETS.—Notwithstanding any other provision of this
9 Act, the authorities, functions, and capabilities of the
10 Coast Guard to perform its missions shall be maintained
11 intact and without significant reduction after the transfer
12 of the Coast Guard to the Department, except as specified
13 in subsequent Acts.

14 (d) CERTAIN TRANSFERS PROHIBITED.—No mission,
15 function, or asset (including for purposes of this sub-
16 section any ship, aircraft, or helicopter) of the Coast
17 Guard may be diverted to the principal and continuing use
18 of any other organization, unit, or entity of the Depart-
19 ment, except for details or assignments that do not reduce
20 the Coast Guard’s capability to perform its missions.

21 (e) CHANGES TO MISSIONS.—

22 (1) PROHIBITION.—The Secretary may not sub-
23 stantially or significantly reduce the missions of the
24 Coast Guard or the Coast Guard’s capability to per-

1 form those missions, except as specified in subse-
2 quent Acts.

3 (2) WAIVER.—The Secretary may waive the re-
4 strictions under paragraph (1) for a period of not to
5 exceed 90 days upon a declaration and certification
6 by the Secretary to Congress that a clear, compel-
7 ling, and immediate need exists for such a waiver.
8 A certification under this paragraph shall include a
9 detailed justification for the declaration and certifi-
10 cation, including the reasons and specific informa-
11 tion that demonstrate that the Nation and the Coast
12 Guard cannot respond effectively if the restrictions
13 under paragraph (1) are not waived.

14 (f) ANNUAL REVIEW.—

15 (1) IN GENERAL.—The Inspector General of
16 the Department shall conduct an annual review that
17 shall assess thoroughly the performance by the
18 Coast Guard of all missions of the Coast Guard (in-
19 cluding non-homeland security missions and home-
20 land security missions) with a particular emphasis
21 on examining the non-homeland security missions.

22 (2) REPORT.—The report under this paragraph
23 shall be submitted to—

24 (A) the Committee on Governmental Af-
25 fairs of the Senate;

1 (B) the Committee on Government Reform
2 of the House of Representatives;

3 (C) the Committees on Appropriations of
4 the Senate and the House of Representatives;

5 (D) the Committee on Commerce, Science,
6 and Transportation of the Senate; and

7 (E) the Committee on Transportation and
8 Infrastructure of the House of Representatives.

9 (g) DIRECT REPORTING TO SECRETARY.—Upon the
10 transfer of the Coast Guard to the Department, the Com-
11 mandant shall report directly to the Secretary without
12 being required to report through any other official of the
13 Department.

14 (h) OPERATION AS A SERVICE IN THE NAVY.—None
15 of the conditions and restrictions in this section shall
16 apply when the Coast Guard operates as a service in the
17 Navy under section 3 of title 14, United States Code.

18 (i) REPORT ON ACCELERATING THE INTEGRATED
19 DEEPWATER SYSTEM.—Not later than 90 days after the
20 date of enactment of this Act, the Secretary, in consulta-
21 tion with the Commandant of the Coast Guard, shall sub-
22 mit a report to the Committee on Commerce, Science, and
23 Transportation of the Senate, the Committee on Trans-
24 portation and Infrastructure of the House of Representa-

1 tives, and the Committees on Appropriations of the Senate
2 and the House of Representatives that—

3 (1) analyzes the feasibility of accelerating the
4 rate of procurement in the Coast Guard’s Integrated
5 Deepwater System from 20 years to 10 years;

6 (2) includes an estimate of additional resources
7 required;

8 (3) describes the resulting increased capabili-
9 ties;

10 (4) outlines any increases in the Coast Guard’s
11 homeland security readiness;

12 (5) describes any increases in operational effi-
13 ciencies; and

14 (6) provides a revised asset phase-in time line.

15 **SEC. 889. HOMELAND SECURITY FUNDING ANALYSIS IN**
16 **PRESIDENT’S BUDGET.**

17 (a) IN GENERAL.—Section 1105(a) of title 31,
18 United States Code, is amended by adding at the end the
19 following:

20 “(33)(A)(i) a detailed, separate analysis, by
21 budget function, by agency, and by initiative area
22 (as determined by the administration) for the prior
23 fiscal year, the current fiscal year, the fiscal years
24 for which the budget is submitted, and the ensuing
25 fiscal year identifying the amounts of gross and net

1 appropriations or obligational authority and outlays
2 that contribute to homeland security, with separate
3 displays for mandatory and discretionary amounts,
4 including—

5 “(I) summaries of the total amount of
6 such appropriations or new obligational author-
7 ity and outlays requested for homeland security;

8 “(II) an estimate of the current service lev-
9 els of homeland security spending;

10 “(III) the most recent risk assessment and
11 summary of homeland security needs in each
12 initiative area (as determined by the adminis-
13 tration); and

14 “(IV) an estimate of user fees collected by
15 the Federal Government on behalf of homeland
16 security activities;

17 “(ii) with respect to subclauses (I) through (IV)
18 of clause (i), amounts shall be provided by account
19 for each program, project and activity; and

20 “(iii) an estimate of expenditures for homeland
21 security activities by State and local governments
22 and the private sector for the prior fiscal year and
23 the current fiscal year.

24 “(B) In this paragraph, consistent with the Of-
25 fice of Management and Budget’s June 2002 ‘An-

1 nual Report to Congress on Combatting Terrorism’,
2 the term ‘homeland security’ refers to those activi-
3 ties that detect, deter, protect against, and respond
4 to terrorist attacks occurring within the United
5 States and its territories.

6 “(C) In implementing this paragraph, including
7 determining what Federal activities or accounts con-
8 stitute homeland security for purposes of budgetary
9 classification, the Office of Management and Budget
10 is directed to consult periodically, but at least annu-
11 ally, with the House and Senate Budget Commit-
12 tees, the House and Senate Appropriations Commit-
13 tees, and the Congressional Budget Office.”.

14 (b) REPEAL OF DUPLICATIVE REPORTS.—The fol-
15 lowing sections are repealed:

16 (1) Section 1051 of Public Law 105–85.

17 (2) Section 1403 of Public Law 105–261.

18 (c) EFFECTIVE DATE.—This section and the amend-
19 ment made by this section shall apply beginning with re-
20 spect to the fiscal year 2005 budget submission.

21 **SEC. 890. AIR TRANSPORTATION SAFETY AND SYSTEM STA-**
22 **BILIZATION ACT.**

23 The Air Transportation Safety and System Stabiliza-
24 tion Act (49 U.S.C. 40101 note) is amended—

1 (1) in section 408 by striking the last sentence
2 of subsection (c); and

3 (2) in section 402 by striking paragraph (1)
4 and inserting the following:

5 “(1) AIR CARRIER.—The term ‘air carrier’
6 means a citizen of the United States undertaking by
7 any means, directly or indirectly, to provide air
8 transportation and includes employees and agents
9 (including persons engaged in the business of pro-
10 viding air transportation security and their affili-
11 ates) of such citizen. For purposes of the preceding
12 sentence, the term ‘agent’, as applied to persons en-
13 gaged in the business of providing air transportation
14 security, shall only include persons that have con-
15 tracted directly with the Federal Aviation Adminis-
16 tration on or after and commenced services no later
17 than February 17, 2002, to provide such security,
18 and had not been or are not debarred for any period
19 within 6 months from that date.”.

20 **Subtitle I—Information Sharing**

21 **SEC. 891. SHORT TITLE; FINDINGS; AND SENSE OF CON-**
22 **GRESS.**

23 (a) SHORT TITLE.—This subtitle may be cited as the
24 “Homeland Security Information Sharing Act”.

25 (b) FINDINGS.—Congress finds the following:

1 (1) The Federal Government is required by the
2 Constitution to provide for the common defense,
3 which includes terrorist attack.

4 (2) The Federal Government relies on State
5 and local personnel to protect against terrorist at-
6 tack.

7 (3) The Federal Government collects, creates,
8 manages, and protects classified and sensitive but
9 unclassified information to enhance homeland secu-
10 rity.

11 (4) Some homeland security information is
12 needed by the State and local personnel to prevent
13 and prepare for terrorist attack.

14 (5) The needs of State and local personnel to
15 have access to relevant homeland security informa-
16 tion to combat terrorism must be reconciled with the
17 need to preserve the protected status of such infor-
18 mation and to protect the sources and methods used
19 to acquire such information.

20 (6) Granting security clearances to certain
21 State and local personnel is one way to facilitate the
22 sharing of information regarding specific terrorist
23 threats among Federal, State, and local levels of
24 government.

1 (7) Methods exist to declassify, redact, or other-
2 wise adapt classified information so it may be shared
3 with State and local personnel without the need for
4 granting additional security clearances.

5 (8) State and local personnel have capabilities
6 and opportunities to gather information on sus-
7 picious activities and terrorist threats not possessed
8 by Federal agencies.

9 (9) The Federal Government and State and
10 local governments and agencies in other jurisdictions
11 may benefit from such information.

12 (10) Federal, State, and local governments and
13 intelligence, law enforcement, and other emergency
14 preparation and response agencies must act in part-
15 nership to maximize the benefits of information
16 gathering and analysis to prevent and respond to
17 terrorist attacks.

18 (11) Information systems, including the Na-
19 tional Law Enforcement Telecommunications Sys-
20 tem and the Terrorist Threat Warning System, have
21 been established for rapid sharing of classified and
22 sensitive but unclassified information among Fed-
23 eral, State, and local entities.

1 (12) Increased efforts to share homeland secu-
2 rity information should avoid duplicating existing in-
3 formation systems.

4 (c) SENSE OF CONGRESS.—It is the sense of Con-
5 gress that Federal, State, and local entities should share
6 homeland security information to the maximum extent
7 practicable, with special emphasis on hard-to-reach urban
8 and rural communities.

9 **SEC. 892. FACILITATING HOMELAND SECURITY INFORMA-**
10 **TION SHARING PROCEDURES.**

11 (a) PROCEDURES FOR DETERMINING EXTENT OF
12 SHARING OF HOMELAND SECURITY INFORMATION.—

13 (1) The President shall prescribe and imple-
14 ment procedures under which relevant Federal
15 agencies—

16 (A) share relevant and appropriate home-
17 land security information with other Federal
18 agencies, including the Department, and appro-
19 priate State and local personnel;

20 (B) identify and safeguard homeland secu-
21 rity information that is sensitive but unclassi-
22 fied; and

23 (C) to the extent such information is in
24 classified form, determine whether, how, and to
25 what extent to remove classified information, as

1 appropriate, and with which such personnel it
2 may be shared after such information is re-
3 moved.

4 (2) The President shall ensure that such proce-
5 dures apply to all agencies of the Federal Govern-
6 ment.

7 (3) Such procedures shall not change the sub-
8 stantive requirements for the classification and safe-
9 guarding of classified information.

10 (4) Such procedures shall not change the re-
11 quirements and authorities to protect sources and
12 methods.

13 (b) PROCEDURES FOR SHARING OF HOMELAND SE-
14 curity INFORMATION.—

15 (1) Under procedures prescribed by the Presi-
16 dent, all appropriate agencies, including the intel-
17 ligence community, shall, through information shar-
18 ing systems, share homeland security information
19 with Federal agencies and appropriate State and
20 local personnel to the extent such information may
21 be shared, as determined in accordance with sub-
22 section (a), together with assessments of the credi-
23 bility of such information.

1 (2) Each information sharing system through
2 which information is shared under paragraph (1)
3 shall—

4 (A) have the capability to transmit unclas-
5 sified or classified information, though the pro-
6 cedures and recipients for each capability may
7 differ;

8 (B) have the capability to restrict delivery
9 of information to specified subgroups by geo-
10 graphic location, type of organization, position
11 of a recipient within an organization, or a re-
12 cipient's need to know such information;

13 (C) be configured to allow the efficient and
14 effective sharing of information; and

15 (D) be accessible to appropriate State and
16 local personnel.

17 (3) The procedures prescribed under paragraph
18 (1) shall establish conditions on the use of informa-
19 tion shared under paragraph (1)—

20 (A) to limit the redissemination of such in-
21 formation to ensure that such information is
22 not used for an unauthorized purpose;

23 (B) to ensure the security and confiden-
24 tiality of such information;

1 (C) to protect the constitutional and statu-
2 tory rights of any individuals who are subjects
3 of such information; and

4 (D) to provide data integrity through the
5 timely removal and destruction of obsolete or
6 erroneous names and information.

7 (4) The procedures prescribed under paragraph
8 (1) shall ensure, to the greatest extent practicable,
9 that the information sharing system through which
10 information is shared under such paragraph include
11 existing information sharing systems, including, but
12 not limited to, the National Law Enforcement Tele-
13 communications System, the Regional Information
14 Sharing System, and the Terrorist Threat Warning
15 System of the Federal Bureau of Investigation.

16 (5) Each appropriate Federal agency, as deter-
17 mined by the President, shall have access to each in-
18 formation sharing system through which information
19 is shared under paragraph (1), and shall therefore
20 have access to all information, as appropriate,
21 shared under such paragraph.

22 (6) The procedures prescribed under paragraph
23 (1) shall ensure that appropriate State and local
24 personnel are authorized to use such information
25 sharing systems—

1 (A) to access information shared with such
2 personnel; and

3 (B) to share, with others who have access
4 to such information sharing systems, the home-
5 land security information of their own jurisdic-
6 tions, which shall be marked appropriately as
7 pertaining to potential terrorist activity.

8 (7) Under procedures prescribed jointly by the
9 Director of Central Intelligence and the Attorney
10 General, each appropriate Federal agency, as deter-
11 mined by the President, shall review and assess the
12 information shared under paragraph (6) and inte-
13 grate such information with existing intelligence.

14 (c) SHARING OF CLASSIFIED INFORMATION AND
15 SENSITIVE BUT UNCLASSIFIED INFORMATION WITH
16 STATE AND LOCAL PERSONNEL.—

17 (1) The President shall prescribe procedures
18 under which Federal agencies may, to the extent the
19 President considers necessary, share with appro-
20 priate State and local personnel homeland security
21 information that remains classified or otherwise pro-
22 tected after the determinations prescribed under the
23 procedures set forth in subsection (a).

24 (2) It is the sense of Congress that such proce-
25 dures may include 1 or more of the following means:

1 (A) Carrying out security clearance inves-
2 tigations with respect to appropriate State and
3 local personnel.

4 (B) With respect to information that is
5 sensitive but unclassified, entering into non-
6 disclosure agreements with appropriate State
7 and local personnel.

8 (C) Increased use of information-sharing
9 partnerships that include appropriate State and
10 local personnel, such as the Joint Terrorism
11 Task Forces of the Federal Bureau of Inves-
12 tigation, the Anti-Terrorism Task Forces of the
13 Department of Justice, and regional Terrorism
14 Early Warning Groups.

15 (d) RESPONSIBLE OFFICIALS.—For each affected
16 Federal agency, the head of such agency shall designate
17 an official to administer this Act with respect to such
18 agency.

19 (e) FEDERAL CONTROL OF INFORMATION.—Under
20 procedures prescribed under this section, information ob-
21 tained by a State or local government from a Federal
22 agency under this section shall remain under the control
23 of the Federal agency, and a State or local law authorizing
24 or requiring such a government to disclose information
25 shall not apply to such information.

1 (f) DEFINITIONS.—As used in this section:

2 (1) The term “homeland security information”
3 means any information possessed by a Federal,
4 State, or local agency that—

5 (A) relates to the threat of terrorist activ-
6 ity;

7 (B) relates to the ability to prevent, inter-
8 dict, or disrupt terrorist activity;

9 (C) would improve the identification or in-
10 vestigation of a suspected terrorist or terrorist
11 organization; or

12 (D) would improve the response to a ter-
13 rorist act.

14 (2) The term “intelligence community” has the
15 meaning given such term in section 3(4) of the Na-
16 tional Security Act of 1947 (50 U.S.C. 401a(4)).

17 (3) The term “State and local personnel”
18 means any of the following persons involved in pre-
19 vention, preparation, or response for terrorist attack:

20 (A) State Governors, mayors, and other lo-
21 cally elected officials.

22 (B) State and local law enforcement per-
23 sonnel and firefighters.

24 (C) Public health and medical profes-
25 sionals.

1 (D) Regional, State, and local emergency
2 management agency personnel, including State
3 adjutant generals.

4 (E) Other appropriate emergency response
5 agency personnel.

6 (F) Employees of private-sector entities
7 that affect critical infrastructure, cyber, eco-
8 nomic, or public health security, as designated
9 by the Federal government in procedures devel-
10 oped pursuant to this section.

11 (4) The term “State” includes the District of
12 Columbia and any commonwealth, territory, or pos-
13 session of the United States.

14 (g) CONSTRUCTION.—Nothing in this Act shall be
15 construed as authorizing any department, bureau, agency,
16 officer, or employee of the Federal Government to request,
17 receive, or transmit to any other Government entity or
18 personnel, or transmit to any State or local entity or per-
19 sonnel otherwise authorized by this Act to receive home-
20 land security information, any information collected by the
21 Federal Government solely for statistical purposes in vio-
22 lation of any other provision of law relating to the con-
23 fidentiality of such information.

1 **SEC. 893. REPORT.**

2 (a) REPORT REQUIRED.—Not later than 12 months
3 after the date of the enactment of this Act, the President
4 shall submit to the congressional committees specified in
5 subsection (b) a report on the implementation of section
6 892. The report shall include any recommendations for ad-
7 ditional measures or appropriation requests, beyond the
8 requirements of section 892, to increase the effectiveness
9 of sharing of information between and among Federal,
10 State, and local entities.

11 (b) SPECIFIED CONGRESSIONAL COMMITTEES.—The
12 congressional committees referred to in subsection (a) are
13 the following committees:

14 (1) The Permanent Select Committee on Intel-
15 ligence and the Committee on the Judiciary of the
16 House of Representatives.

17 (2) The Select Committee on Intelligence and
18 the Committee on the Judiciary of the Senate.

19 **SEC. 894. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated such sums
21 as may be necessary to carry out section 892.

22 **SEC. 895. AUTHORITY TO SHARE GRAND JURY INFORMA-**
23 **TION.**

24 Rule 6(e) of the Federal Rules of Criminal Procedure
25 is amended—

1 (1) in paragraph (2), by inserting “, or of
2 guidelines jointly issued by the Attorney General and
3 Director of Central Intelligence pursuant to Rule 6,”
4 after “Rule 6”; and

5 (2) in paragraph (3)—

6 (A) in subparagraph (A)(ii), by inserting
7 “or of a foreign government” after “(including
8 personnel of a state or subdivision of a state”;

9 (B) in subparagraph (C)(i)—

10 (i) in subclause (I), by inserting be-
11 fore the semicolon the following: “or, upon
12 a request by an attorney for the govern-
13 ment, when sought by a foreign court or
14 prosecutor for use in an official criminal
15 investigation”;

16 (ii) in subclause (IV)—

17 (I) by inserting “or foreign”
18 after “may disclose a violation of
19 State”;

20 (II) by inserting “or of a foreign
21 government” after “to an appropriate
22 official of a State or subdivision of a
23 State”; and

24 (III) by striking “or” at the end;

1 (iii) by striking the period at the end
2 of subclause (V) and inserting “; or”;

3 (iv) by adding at the end the fol-
4 lowing:

5 “(VI) when matters involve a threat
6 of actual or potential attack or other grave
7 hostile acts of a foreign power or an agent
8 of a foreign power, domestic or inter-
9 national sabotage, domestic or inter-
10 national terrorism, or clandestine intel-
11 ligence gathering activities by an intel-
12 ligence service or network of a foreign
13 power or by an agent of a foreign power,
14 within the United States or elsewhere, to
15 any appropriate federal, state, local, or for-
16 eign government official for the purpose of
17 preventing or responding to such a
18 threat.”; and

19 (C) in subparagraph (C)(iii)—

20 (i) by striking “Federal”;

21 (ii) by inserting “or clause (i)(VI)”
22 after “clause (i)(V)”;

23 (iii) by adding at the end the fol-
24 lowing: “Any state, local, or foreign official
25 who receives information pursuant to

1 clause (i)(VI) shall use that information
2 only consistent with such guidelines as the
3 Attorney General and Director of Central
4 Intelligence shall jointly issue.”.

5 **SEC. 896. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND**
6 **ORAL INTERCEPTION INFORMATION.**

7 Section 2517 of title 18, United States Code, is
8 amended by adding at the end the following:

9 “(7) Any investigative or law enforcement officer, or
10 other Federal official in carrying out official duties as such
11 Federal official, who by any means authorized by this
12 chapter, has obtained knowledge of the contents of any
13 wire, oral, or electronic communication, or evidence de-
14 rived therefrom, may disclose such contents or derivative
15 evidence to a foreign investigative or law enforcement offi-
16 cer to the extent that such disclosure is appropriate to
17 the proper performance of the official duties of the officer
18 making or receiving the disclosure, and foreign investiga-
19 tive or law enforcement officers may use or disclose such
20 contents or derivative evidence to the extent such use or
21 disclosure is appropriate to the proper performance of
22 their official duties.

23 “(8) Any investigative or law enforcement officer, or
24 other Federal official in carrying out official duties as such
25 Federal official, who by any means authorized by this

1 chapter, has obtained knowledge of the contents of any
2 wire, oral, or electronic communication, or evidence de-
3 rived therefrom, may disclose such contents or derivative
4 evidence to any appropriate Federal, State, local, or for-
5 eign government official to the extent that such contents
6 or derivative evidence reveals a threat of actual or poten-
7 tial attack or other grave hostile acts of a foreign power
8 or an agent of a foreign power, domestic or international
9 sabotage, domestic or international terrorism, or clandes-
10 tine intelligence gathering activities by an intelligence
11 service or network of a foreign power or by an agent of
12 a foreign power, within the United States or elsewhere,
13 for the purpose of preventing or responding to such a
14 threat. Any official who receives information pursuant to
15 this provision may use that information only as necessary
16 in the conduct of that person's official duties subject to
17 any limitations on the unauthorized disclosure of such in-
18 formation, and any State, local, or foreign official who re-
19 ceives information pursuant to this provision may use that
20 information only consistent with such guidelines as the At-
21 torney General and Director of Central Intelligence shall
22 jointly issue.”.

23 **SEC. 897. FOREIGN INTELLIGENCE INFORMATION.**

24 (a) DISSEMINATION AUTHORIZED.—Section
25 203(d)(1) of the Uniting and Strengthening America by

1 Providing Appropriate Tools Required to Intercept and
2 Obstruct Terrorism (USA PATRIOT ACT) Act of 2001
3 (Public Law 107–56; 50 U.S.C. 403–5d) is amended by
4 adding at the end the following: “Consistent with the re-
5 sponsibility of the Director of Central Intelligence to pro-
6 tect intelligence sources and methods, and the responsi-
7 bility of the Attorney General to protect sensitive law en-
8 forcement information, it shall be lawful for information
9 revealing a threat of actual or potential attack or other
10 grave hostile acts of a foreign power or an agent of a for-
11 eign power, domestic or international sabotage, domestic
12 or international terrorism, or clandestine intelligence gath-
13 ering activities by an intelligence service or network of a
14 foreign power or by an agent of a foreign power, within
15 the United States or elsewhere, obtained as part of a
16 criminal investigation to be disclosed to any appropriate
17 Federal, State, local, or foreign government official for the
18 purpose of preventing or responding to such a threat. Any
19 official who receives information pursuant to this provision
20 may use that information only as necessary in the conduct
21 of that person’s official duties subject to any limitations
22 on the unauthorized disclosure of such information, and
23 any State, local, or foreign official who receives informa-
24 tion pursuant to this provision may use that information
25 only consistent with such guidelines as the Attorney Gen-

1 eral and Director of Central Intelligence shall jointly
2 issue.”.

3 (b) CONFORMING AMENDMENTS.—Section 203(c) of
4 that Act is amended—

5 (1) by striking “section 2517(6)” and inserting
6 “paragraphs (6) and (8) of section 2517 of title 18,
7 United States Code,”; and

8 (2) by inserting “and (VI)” after “Rule
9 6(e)(3)(C)(i)(V)”.

10 **SEC. 898. INFORMATION ACQUIRED FROM AN ELECTRONIC**
11 **SURVEILLANCE.**

12 Section 106(k)(1) of the Foreign Intelligence Surveil-
13 lance Act of 1978 (50 U.S.C. 1806) is amended by insert-
14 ing after “law enforcement officers” the following: “or law
15 enforcement personnel of a State or political subdivision
16 of a State (including the chief executive officer of that
17 State or political subdivision who has the authority to ap-
18 point or direct the chief law enforcement officer of that
19 State or political subdivision)”.

20 **SEC. 899. INFORMATION ACQUIRED FROM A PHYSICAL**
21 **SEARCH.**

22 Section 305(k)(1) of the Foreign Intelligence Surveil-
23 lance Act of 1978 (50 U.S.C. 1825) is amended by insert-
24 ing after “law enforcement officers” the following: “or law
25 enforcement personnel of a State or political subdivision

1 of a State (including the chief executive officer of that
2 State or political subdivision who has the authority to ap-
3 point or direct the chief law enforcement officer of that
4 State or political subdivision)”.

5 **TITLE IX—NATIONAL**
6 **HOMELAND SECURITY COUNCIL**

7 **SEC. 901. NATIONAL HOMELAND SECURITY COUNCIL.**

8 There is established within the Executive Office of
9 the President a council to be known as the “Homeland
10 Security Council” (in this title referred to as the “Coun-
11 cil”).

12 **SEC. 902. FUNCTION.**

13 The function of the Council shall be to advise the
14 President on homeland security matters.

15 **SEC. 903. MEMBERSHIP.**

16 The members of the Council shall be the following:

- 17 (1) The President.
- 18 (2) The Vice President.
- 19 (3) The Secretary of Homeland Security.
- 20 (4) The Attorney General.
- 21 (5) The Secretary of Defense.
- 22 (6) Such other individuals as may be designated
23 by the President.

1 **SEC. 904. OTHER FUNCTIONS AND ACTIVITIES.**

2 For the purpose of more effectively coordinating the
3 policies and functions of the United States Government
4 relating to homeland security, the Council shall—

5 (1) assess the objectives, commitments, and
6 risks of the United States in the interest of home-
7 land security and to make resulting recommenda-
8 tions to the President;

9 (2) oversee and review homeland security poli-
10 cies of the Federal Government and to make result-
11 ing recommendations to the President; and

12 (3) perform such other functions as the Presi-
13 dent may direct.

14 **SEC. 905. STAFF COMPOSITION.**

15 The Council shall have a staff, the head of which shall
16 be a civilian Executive Secretary, who shall be appointed
17 by the President. The President is authorized to fix the
18 pay of the Executive Secretary at a rate not to exceed
19 the rate of pay payable to the Executive Secretary of the
20 National Security Council.

21 **SEC. 906. RELATION TO THE NATIONAL SECURITY COUN-
22 CIL.**

23 The President may convene joint meetings of the
24 Homeland Security Council and the National Security
25 Council with participation by members of either Council
26 or as the President may otherwise direct.

1 **TITLE X—INFORMATION**
2 **SECURITY**

3 **SEC. 1001. INFORMATION SECURITY.**

4 (a) **SHORT TITLE.**—This title may be cited as the
5 “Federal Information Security Management Act of 2002”.

6 (b) **INFORMATION SECURITY.**—

7 (1) **IN GENERAL.**—Subchapter II of chapter 35
8 of title 44, United States Code, is amended to read
9 as follows:

10 **“SUBCHAPTER II—INFORMATION**
11 **SECURITY**

12 **“§ 3531. Purposes**

13 “The purposes of this subchapter are to—

14 “(1) provide a comprehensive framework for en-
15 suring the effectiveness of information security con-
16 trols over information resources that support Fed-
17 eral operations and assets;

18 “(2) recognize the highly networked nature of
19 the current Federal computing environment and pro-
20 vide effective governmentwide management and over-
21 sight of the related information security risks, in-
22 cluding coordination of information security efforts
23 throughout the civilian, national security, and law
24 enforcement communities;

1 “(3) provide for development and maintenance
2 of minimum controls required to protect Federal in-
3 formation and information systems;

4 “(4) provide a mechanism for improved over-
5 sight of Federal agency information security pro-
6 grams;

7 “(5) acknowledge that commercially developed
8 information security products offer advanced, dy-
9 namic, robust, and effective information security so-
10 lutions, reflecting market solutions for the protection
11 of critical information infrastructures important to
12 the national defense and economic security of the
13 nation that are designed, built, and operated by the
14 private sector; and

15 “(6) recognize that the selection of specific
16 technical hardware and software information secu-
17 rity solutions should be left to individual agencies
18 from among commercially developed products.”.

19 **“§ 3532. Definitions**

20 “(a) IN GENERAL.—Except as provided under sub-
21 section (b), the definitions under section 3502 shall apply
22 to this subchapter.

23 “(b) ADDITIONAL DEFINITIONS.—As used in this
24 subchapter—

1 “(1) the term ‘information security’ means pro-
2 tecting information and information systems from
3 unauthorized access, use, disclosure, disruption,
4 modification, or destruction in order to provide—

5 “(A) integrity, which means guarding
6 against improper information modification or
7 destruction, and includes ensuring information
8 nonrepudiation and authenticity;

9 “(B) confidentiality, which means pre-
10 serving authorized restrictions on access and
11 disclosure, including means for protecting per-
12 sonal privacy and proprietary information;

13 “(C) availability, which means ensuring
14 timely and reliable access to and use of infor-
15 mation; and

16 “(D) authentication, which means utilizing
17 digital credentials to assure the identity of
18 users and validate their access;

19 “(2) the term ‘national security system’ means
20 any information system (including any telecommuni-
21 cations system) used or operated by an agency or by
22 a contractor of an agency, or other organization on
23 behalf of an agency, the function, operation, or use
24 of which—

25 “(A) involves intelligence activities;

1 “(B) involves cryptologic activities related
2 to national security;

3 “(C) involves command and control of mili-
4 tary forces;

5 “(D) involves equipment that is an integral
6 part of a weapon or weapons system; or

7 “(E) is critical to the direct fulfillment of
8 military or intelligence missions provided that
9 this definition does not apply to a system that
10 is used for routine administrative and business
11 applications (including payroll, finance, logis-
12 tics, and personnel management applications);

13 “(3) the term ‘information technology’ has the
14 meaning given that term in section 11101 of title
15 40; and

16 “(4) the term ‘information system’ means any
17 equipment or interconnected system or subsystems
18 of equipment that is used in the automatic acquisi-
19 tion, storage, manipulation, management, movement,
20 control, display, switching, interchange, trans-
21 mission, or reception of data or information, and
22 includes—

23 “(A) computers and computer networks;

24 “(B) ancillary equipment;

1 “(C) software, firmware, and related proce-
2 dures;

3 “(D) services, including support services;
4 and

5 “(E) related resources.”.

6 **“§ 3533. Authority and functions of the Director**

7 “(a) The Director shall oversee agency information
8 security policies and practices, by—

9 “(1) promulgating information security stand-
10 ards under section 11331 of title 40;

11 “(2) overseeing the implementation of policies,
12 principles, standards, and guidelines on information
13 security;

14 “(3) requiring agencies, consistent with the
15 standards promulgated under such section 11331
16 and the requirements of this subchapter, to identify
17 and provide information security protections com-
18 mensurate with the risk and magnitude of the harm
19 resulting from the unauthorized access, use, disclo-
20 sure, disruption, modification, or destruction of—

21 “(A) information collected or maintained
22 by or on behalf of an agency; or

23 “(B) information systems used or operated
24 by an agency or by a contractor of an agency
25 or other organization on behalf of an agency;

1 “(4) coordinating the development of standards
2 and guidelines under section 20 of the National In-
3 stitute of Standards and Technology Act (15 U.S.C.
4 278g-3) with agencies and offices operating or exer-
5 cising control of national security systems (including
6 the National Security Agency) to assure, to the max-
7 imum extent feasible, that such standards and
8 guidelines are complementary with standards and
9 guidelines developed for national security systems;

10 “(5) overseeing agency compliance with the re-
11 quirements of this subchapter, including through
12 any authorized action under section 11303(b)(5) of
13 title 40, to enforce accountability for compliance
14 with such requirements;

15 “(6) reviewing at least annually, and approving
16 or disapproving, agency information security pro-
17 grams required under section 3534(b);

18 “(7) coordinating information security policies
19 and procedures with related information resources
20 management policies and procedures; and

21 “(8) reporting to Congress no later than March
22 1 of each year on agency compliance with the re-
23 quirements of this subchapter, including—

24 “(A) a summary of the findings of evalua-
25 tions required by section 3535;

1 “(B) significant deficiencies in agency in-
2 formation security practices;

3 “(C) planned remedial action to address
4 such deficiencies; and

5 “(D) a summary of, and the views of the
6 Director on, the report prepared by the Na-
7 tional Institute of Standards and Technology
8 under section 20(e)(7) of the National Institute
9 of Standards and Technology Act (15 U.S.C.
10 278g-3).”.

11 “(b) Except for the authorities described in para-
12 graphs (4) and (7) of subsection (a), the authorities of
13 the Director under this section shall not apply to national
14 security systems.

15 **“§ 3534. Federal agency responsibilities**

16 “(a) The head of each agency shall—

17 “(1) be responsible for—

18 “(A) providing information security protec-
19 tions commensurate with the risk and mag-
20 nitude of the harm resulting from unauthorized
21 access, use, disclosure, disruption, modification,
22 or destruction of—

23 “(i) information collected or main-
24 tained by or on behalf of the agency; and

1 “(ii) information systems used or op-
2 erated by an agency or by a contractor of
3 an agency or other organization on behalf
4 of an agency;

5 “(B) complying with the requirements of
6 this subchapter and related policies, procedures,
7 standards, and guidelines, including—

8 “(i) information security standards
9 promulgated by the Director under section
10 11331 of title 40; and

11 “(ii) information security standards
12 and guidelines for national security sys-
13 tems issued in accordance with law and as
14 directed by the President; and

15 “(C) ensuring that information security
16 management processes are integrated with
17 agency strategic and operational planning pro-
18 cesses;

19 “(2) ensure that senior agency officials provide
20 information security for the information and infor-
21 mation systems that support the operations and as-
22 sets under their control, including through—

23 “(A) assessing the risk and magnitude of
24 the harm that could result from the unauthor-
25 ized access, use, disclosure, disruption, modi-

1 fication, or destruction of such information or
2 information systems;

3 “(B) determining the levels of information
4 security appropriate to protect such information
5 and information systems in accordance with
6 standards promulgated under section 11331 of
7 title 40 for information security classifications
8 and related requirements;

9 “(C) implementing policies and procedures
10 to cost-effectively reduce risks to an acceptable
11 level; and

12 “(D) periodically testing and evaluating in-
13 formation security controls and techniques to
14 ensure that they are effectively implemented;

15 “(3) delegate to the agency Chief Information
16 Officer established under section 3506 (or com-
17 parable official in an agency not covered by such
18 section) the authority to ensure compliance with the
19 requirements imposed on the agency under this sub-
20 chapter, including—

21 “(A) designating a senior agency informa-
22 tion security officer who shall—

23 “(i) carry out the Chief Information
24 Officer’s responsibilities under this section;

1 “(ii) possess professional qualifica-
2 tions, including training and experience,
3 required to administer the functions de-
4 scribed under this section;

5 “(iii) have information security duties
6 as that official’s primary duty; and

7 “(iv) head an office with the mission
8 and resources to assist in ensuring agency
9 compliance with this section;

10 “(B) developing and maintaining an agen-
11 cywide information security program as re-
12 quired by subsection (b);

13 “(C) developing and maintaining informa-
14 tion security policies, procedures, and control
15 techniques to address all applicable require-
16 ments, including those issued under section
17 3533 of this title, and section 11331 of title 40;

18 “(D) training and overseeing personnel
19 with significant responsibilities for information
20 security with respect to such responsibilities;
21 and

22 “(E) assisting senior agency officials con-
23 cerning their responsibilities under paragraph
24 (2);

1 “(4) ensure that the agency has trained per-
2 sonnel sufficient to assist the agency in complying
3 with the requirements of this subchapter and related
4 policies, procedures, standards, and guidelines; and

5 “(5) ensure that the agency Chief Information
6 Officer, in coordination with other senior agency of-
7 ficials, reports annually to the agency head on the
8 effectiveness of the agency information security pro-
9 gram, including progress of remedial actions.

10 “(b) Each agency shall develop, document, and imple-
11 ment an agencywide information security program, ap-
12 proved by the Director under section 3533(a)(5), to pro-
13 vide information security for the information and informa-
14 tion systems that support the operations and assets of the
15 agency, including those provided or managed by another
16 agency, contractor, or other source, that includes—

17 “(1) periodic assessments of the risk and mag-
18 nitude of the harm that could result from the unau-
19 thorized access, use, disclosure, disruption, modifica-
20 tion, or destruction of information and information
21 systems that support the operations and assets of
22 the agency;

23 “(2) policies and procedures that—

24 “(A) are based on the risk assessments re-
25 quired by paragraph (1);

1 “(B) cost-effectively reduce information se-
2 curity risks to an acceptable level;

3 “(C) ensure that information security is
4 addressed throughout the life cycle of each
5 agency information system; and

6 “(D) ensure compliance with—

7 “(i) the requirements of this sub-
8 chapter;

9 “(ii) policies and procedures as may
10 be prescribed by the Director, and infor-
11 mation security standards promulgated
12 under section 11331 of title 40;

13 “(iii) minimally acceptable system
14 configuration requirements, as determined
15 by the agency; and

16 “(iv) any other applicable require-
17 ments, including standards and guidelines
18 for national security systems issued in ac-
19 cordance with law and as directed by the
20 President;

21 “(3) subordinate plans for providing adequate
22 information security for networks, facilities, and sys-
23 tems or groups of information systems, as appro-
24 priate;

1 “(4) security awareness training to inform per-
2 sonnel, including contractors and other users of in-
3 formation systems that support the operations and
4 assets of the agency, of—

5 “(A) information security risks associated
6 with their activities; and

7 “(B) their responsibilities in complying
8 with agency policies and procedures designed to
9 reduce these risks;

10 “(5) periodic testing and evaluation of the ef-
11 fectiveness of information security policies, proce-
12 dures, and practices, to be performed with a fre-
13 quency depending on risk, but no less than annually,
14 of which such testing—

15 “(A) shall include testing of management,
16 operational, and technical controls of every in-
17 formation system identified in the inventory re-
18 quired under section 3505(c); and

19 “(B) may include testing relied on in a
20 evaluation under section 3535;

21 “(6) a process for planning, implementing, eval-
22 uating, and documenting remedial action to address
23 any deficiencies in the information security policies,
24 procedures, and practices of the agency;

1 “(7) procedures for detecting, reporting, and re-
2 sponding to security incidents, including—

3 “(A) mitigating risks associated with such
4 incidents before substantial damage is done;
5 and

6 “(B) notifying and consulting with, as
7 appropriate—

8 “(i) law enforcement agencies and rel-
9 evant Offices of Inspector General;

10 “(ii) an office designated by the Presi-
11 dent for any incident involving a national
12 security system; and

13 “(iii) any other agency or office, in ac-
14 cordance with law or as directed by the
15 President; and

16 “(8) plans and procedures to ensure continuity
17 of operations for information systems that support
18 the operations and assets of the agency.

19 “(c) Each agency shall—

20 “(1) report annually to the Director, the Com-
21 mittees on Government Reform and Science of the
22 House of Representatives, the Committees on Gov-
23 ernmental Affairs and Commerce, Science, and
24 Transportation of the Senate, the appropriate au-
25 thorization and appropriations committees of Con-

1 gress, and the Comptroller General on the adequacy
2 and effectiveness of information security policies,
3 procedures, and practices, and compliance with the
4 requirements of this subchapter, including compli-
5 ance with each requirement of subsection (b);

6 “(2) address the adequacy and effectiveness of
7 information security policies, procedures, and prac-
8 tices in plans and reports relating to—

9 “(A) annual agency budgets;

10 “(B) information resources management
11 under subchapter 1 of this chapter;

12 “(C) information technology management
13 under subtitle III of title 40;

14 “(D) program performance under sections
15 1105 and 1115 through 1119 of title 31, and
16 sections 2801 and 2805 of title 39;

17 “(E) financial management under chapter
18 9 of title 31, and the Chief Financial Officers
19 Act of 1990 (31 U.S.C. 501 note; Public Law
20 101–576) (and the amendments made by that
21 Act);

22 “(F) financial management systems under
23 the Federal Financial Management Improve-
24 ment Act (31 U.S.C. 3512 note); and

1 “(G) internal accounting and administra-
2 tive controls under section 3512 of title 31,
3 United States Code, (known as the ‘Federal
4 Managers Financial Integrity Act’); and

5 “(3) report any significant deficiency in a pol-
6 icy, procedure, or practice identified under para-
7 graph (1) or (2)—

8 “(A) as a material weakness in reporting
9 under section 3512 of title 31; and

10 “(B) if relating to financial management
11 systems, as an instance of a lack of substantial
12 compliance under the Federal Financial Man-
13 agement Improvement Act (31 U.S.C. 3512
14 note).

15 “(d)(1) In addition to the requirements of subsection
16 (c), each agency, in consultation with the Director, shall
17 include as part of the performance plan required under
18 section 1115 of title 31 a description of—

19 “(A) the time periods, and

20 “(B) the resources, including budget, staffing,
21 and training,

22 that are necessary to implement the program required
23 under subsection (b).

1 “(2) The description under paragraph (1) shall be
2 based on the risk assessments required under subsection
3 (b)(2)(1).

4 “(e) Each agency shall provide the public with timely
5 notice and opportunities for comment on proposed infor-
6 mation security policies and procedures to the extent that
7 such policies and procedures affect communication with
8 the public.

9 **“§ 3535. Annual independent evaluation**

10 “(a)(1) Each year each agency shall have performed
11 an independent evaluation of the information security pro-
12 gram and practices of that agency to determine the effec-
13 tiveness of such program and practices.

14 “(2) Each evaluation by an agency under this section
15 shall include—

16 “(A) testing of the effectiveness of information
17 security policies, procedures, and practices of a rep-
18 resentative subset of the agency’s information sys-
19 tems;

20 “(B) an assessment (made on the basis of the
21 results of the testing) of compliance with—

22 “(i) the requirements of this subchapter;

23 and

24 “(ii) related information security policies,
25 procedures, standards, and guidelines; and

1 “(C) separate presentations, as appropriate, re-
2 garding information security relating to national se-
3 curity systems.

4 “(b) Subject to subsection (c)—

5 “(1) for each agency with an Inspector General
6 appointed under the Inspector General Act of 1978,
7 the annual evaluation required by this section shall
8 be performed by the Inspector General or by an
9 independent external auditor, as determined by the
10 Inspector General of the agency; and

11 “(2) for each agency to which paragraph (1)
12 does not apply, the head of the agency shall engage
13 an independent external auditor to perform the eval-
14 uation.

15 “(c) For each agency operating or exercising control
16 of a national security system, that portion of the evalua-
17 tion required by this section directly relating to a national
18 security system shall be performed—

19 “(1) only by an entity designated by the agency
20 head; and

21 “(2) in such a manner as to ensure appropriate
22 protection for information associated with any infor-
23 mation security vulnerability in such system com-
24 mensurate with the risk and in accordance with all
25 applicable laws.

1 “(d) The evaluation required by this section—

2 “(1) shall be performed in accordance with gen-
3 erally accepted government auditing standards; and

4 “(2) may be based in whole or in part on an
5 audit, evaluation, or report relating to programs or
6 practices of the applicable agency.

7 “(e) Each year, not later than such date established
8 by the Director, the head of each agency shall submit to
9 the Director the results of the evaluation required under
10 this section.

11 “(f) Agencies and evaluators shall take appropriate
12 steps to ensure the protection of information which, if dis-
13 closed, may adversely affect information security. Such
14 protections shall be commensurate with the risk and com-
15 ply with all applicable laws and regulations.

16 “(g)(1) The Director shall summarize the results of
17 the evaluations conducted under this section in the report
18 to Congress required under section 3533(a)(8).

19 “(2) The Director’s report to Congress under this
20 subsection shall summarize information regarding infor-
21 mation security relating to national security systems in
22 such a manner as to ensure appropriate protection for in-
23 formation associated with any information security vulner-
24 ability in such system commensurate with the risk and in
25 accordance with all applicable laws.

1 “(3) Evaluations and any other descriptions of infor-
2 mation systems under the authority and control of the Di-
3 rector of Central Intelligence or of National Foreign Intel-
4 ligence Programs systems under the authority and control
5 of the Secretary of Defense shall be made available to Con-
6 gress only through the appropriate oversight committees
7 of Congress, in accordance with applicable laws.

8 “(h) The Comptroller General shall periodically
9 evaluate and report to Congress on—

10 “(1) the adequacy and effectiveness of agency
11 information security policies and practices; and

12 “(2) implementation of the requirements of this
13 subchapter.

14 **“§ 3536. National security systems**

15 “The head of each agency operating or exercising
16 control of a national security system shall be responsible
17 for ensuring that the agency—

18 “(1) provides information security protections
19 commensurate with the risk and magnitude of the
20 harm resulting from the unauthorized access, use,
21 disclosure, disruption, modification, or destruction of
22 the information contained in such system;

23 “(2) implements information security policies
24 and practices as required by standards and guide-

1 lines for national security systems, issued in accord-
2 ance with law and as directed by the President; and

3 “(3) complies with the requirements of this sub-
4 chapter.

5 **“§ 3537. Authorization of appropriations**

6 “There are authorized to be appropriated to carry out
7 the provisions of this subchapter such sums as may be
8 necessary for each of fiscal years 2003 through 2007.

9 **“§ 3538. Effect on existing law**

10 “Nothing in this subchapter, section 11331 of title
11 40, or section 20 of the National Standards and Tech-
12 nology Act (15 U.S.C. 278g-3) may be construed as af-
13 fecting the authority of the President, the Office of Man-
14 agement and Budget or the Director thereof, the National
15 Institute of Standards and Technology, or the head of any
16 agency, with respect to the authorized use or disclosure
17 of information, including with regard to the protection of
18 personal privacy under section 552a of title 5, the dislo-
19 sure of information under section 552 of title 5, the man-
20 agement and disposition of records under chapters 29, 31,
21 or 33 of title 44, the management of information resources
22 under subchapter I of chapter 35 of this title, or the dis-
23 closure of information to Congress or the Comptroller
24 General of the United States.”.

1 (2) CLERICAL AMENDMENT.—The items in the
2 table of sections at the beginning of such chapter 35
3 under the heading “SUBCHAPTER II” are amend-
4 ed to read as follows:

- “3531. Purposes.
- “3532. Definitions.
- “3533. Authority and functions of the Director.
- “3534. Federal agency responsibilities.
- “3535. Annual independent evaluation.
- “3536. National security systems.
- “3537. Authorization of appropriations.
- “3538. Effect on existing law.”.

5 (c) INFORMATION SECURITY RESPONSIBILITIES OF
6 CERTAIN AGENCIES.—

7 (1) NATIONAL SECURITY RESPONSIBILITIES.—

8 (A) Nothing in this Act (including any amendment
9 made by this Act) shall supersede any authority of
10 the Secretary of Defense, the Director of Central In-
11 telligence, or other agency head, as authorized by
12 law and as directed by the President, with regard to
13 the operation, control, or management of national
14 security systems, as defined by section 3532(3) of
15 title 44, United States Code.

16 (B) Section 2224 of title 10, United States
17 Code, is amended—

18 (i) in subsection 2224(b), by striking “(b)

19 OBJECTIVES AND MINIMUM REQUIREMENTS.—

20 (1)” and inserting “(b) OBJECTIVES OF THE

21 PROGRAM.—”;

1 (ii) in subsection 2224(b), by striking “(2)
2 the program shall at a minimum meet the re-
3 quirements of section 3534 and 3535 of title
4 44, United States Code.”; and

5 (iii) in subsection 2224(c), by inserting “,
6 including through compliance with subtitle II of
7 chapter 35 of title 44” after “infrastructure”.

8 (2) ATOMIC ENERGY ACT OF 1954.—Nothing in
9 this Act shall supersede any requirement made by or
10 under the Atomic Energy Act of 1954 (42 U.S.C.
11 2011 et seq.). Restricted Data or Formerly Re-
12 stricted Data shall be handled, protected, classified,
13 downgraded, and declassified in conformity with the
14 Atomic Energy Act of 1954 (42 U.S.C. 2011 et
15 seq.).

16 **SEC. 1002. MANAGEMENT OF INFORMATION TECHNOLOGY.**

17 (a) IN GENERAL.—Section 11331 of title 40, United
18 States Code, is amended to read as follows:

19 **“§ 11331. Responsibilities for Federal information sys-
20 tems standards**

21 “(a) DEFINITION.—In this section, the term ‘infor-
22 mation security’ has the meaning given that term in sec-
23 tion 3532(b)(1) of title 44.

24 “(b) REQUIREMENT TO PRESCRIBE STANDARDS.—

25 “(1) IN GENERAL.—

1 “(A) REQUIREMENT.—Except as provided
2 under paragraph (2), the Director of the Office
3 of Management and Budget shall, on the basis
4 of proposed standards developed by the Na-
5 tional Institute of Standards and Technology
6 pursuant to paragraphs (2) and (3) of section
7 20(a) of the National Institute of Standards
8 and Technology Act (15 U.S.C. 278g–3(a)) and
9 in consultation with the Secretary of Homeland
10 Security, promulgate information security
11 standards pertaining to Federal information
12 systems.

13 “(B) REQUIRED STANDARDS.—Standards
14 promulgated under subparagraph (A) shall
15 include—

16 “(i) standards that provide minimum
17 information security requirements as deter-
18 mined under section 20(b) of the National
19 Institute of Standards and Technology Act
20 (15 U.S.C. 278g–3(b)); and

21 “(ii) such standards that are other-
22 wise necessary to improve the efficiency of
23 operation or security of Federal informa-
24 tion systems.

1 “(C) REQUIRED STANDARDS BINDING.—
2 Information security standards described under
3 subparagraph (B) shall be compulsory and
4 binding.

5 “(2) STANDARDS AND GUIDELINES FOR NA-
6 TIONAL SECURITY SYSTEMS.—Standards and guide-
7 lines for national security systems, as defined under
8 section 3532(3) of title 44, shall be developed, pro-
9 mulgated, enforced, and overseen as otherwise au-
10 thorized by law and as directed by the President.

11 “(c) APPLICATION OF MORE STRINGENT STAND-
12 ARDS.—The head of an agency may employ standards for
13 the cost-effective information security for all operations
14 and assets within or under the supervision of that agency
15 that are more stringent than the standards promulgated
16 by the Director under this section, if such standards—

17 “(1) contain, at a minimum, the provisions of
18 those applicable standards made compulsory and
19 binding by the Director; and

20 “(2) are otherwise consistent with policies and
21 guidelines issued under section 3533 of title 44.

22 “(d) REQUIREMENTS REGARDING DECISIONS BY DI-
23 RECTOR.—

24 “(1) DEADLINE.—The decision regarding the
25 promulgation of any standard by the Director under

1 subsection (b) shall occur not later than 6 months
2 after the submission of the proposed standard to the
3 Director by the National Institute of Standards and
4 Technology, as provided under section 20 of the Na-
5 tional Institute of Standards and Technology Act
6 (15 U.S.C. 278g-3).

7 “(2) NOTICE AND COMMENT.—A decision by
8 the Director to significantly modify, or not promul-
9 gate, a proposed standard submitted to the Director
10 by the National Institute of Standards and Tech-
11 nology, as provided under section 20 of the National
12 Institute of Standards and Technology Act (15
13 U.S.C. 278g-3), shall be made after the public is
14 given an opportunity to comment on the Director’s
15 proposed decision.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 at the beginning of chapter 113 of title 40, United States
18 Code, is amended by striking the item relating to section
19 11331 and inserting the following:

“11331. Responsibilities for Federal information systems standards.”.

20 **SEC. 1003. NATIONAL INSTITUTE OF STANDARDS AND**
21 **TECHNOLOGY.**

22 Section 20 of the National Institute of Standards and
23 Technology Act (15 U.S.C. 278g-3), is amended by strik-
24 ing the text and inserting the following:

25 “(a) The Institute shall—

1 “(1) have the mission of developing standards,
2 guidelines, and associated methods and techniques
3 for information systems;

4 “(2) develop standards and guidelines, includ-
5 ing minimum requirements, for information systems
6 used or operated by an agency or by a contractor of
7 an agency or other organization on behalf of an
8 agency, other than national security systems (as de-
9 fined in section 3532(b)(2) of title 44, United States
10 Code);

11 “(3) develop standards and guidelines, includ-
12 ing minimum requirements, for providing adequate
13 information security for all agency operations and
14 assets, but such standards and guidelines shall not
15 apply to national security systems; and

16 “(4) carry out the responsibilities described in
17 paragraph (3) through the Computer Security Divi-
18 sion.

19 “(b) The standards and guidelines required by sub-
20 section (a) shall include, at a minimum—

21 “(1)(A) standards to be used by all agencies to
22 categorize all information and information systems
23 collected or maintained by or on behalf of each agen-
24 cy based on the objectives of providing appropriate

1 levels of information security according to a range of
2 risk levels;

3 “(B) guidelines recommending the types of in-
4 formation and information systems to be included in
5 each such category; and

6 “(C) minimum information security require-
7 ments for information and information systems in
8 each such category;

9 “(2) a definition of and guidelines concerning
10 detection and handling of information security inci-
11 dents; and

12 “(3) guidelines developed in coordination with
13 the National Security Agency for identifying an in-
14 formation system as a national security system con-
15 sistent with applicable requirements for national se-
16 curity systems, issued in accordance with law and as
17 directed by the President.

18 “(c) In developing standards and guidelines required
19 by subsections (a) and (b), the Institute shall—

20 “(1) consult with other agencies and offices (in-
21 cluding, but not limited to, the Director of the Office
22 of Management and Budget, the Departments of
23 Defense and Energy, the National Security Agency,
24 the General Accounting Office, and the Secretary of
25 Homeland Security) to assure—

1 “(A) use of appropriate information secu-
2 rity policies, procedures, and techniques, in
3 order to improve information security and avoid
4 unnecessary and costly duplication of effort;
5 and

6 “(B) that such standards and guidelines
7 are complementary with standards and guide-
8 lines employed for the protection of national se-
9 curity systems and information contained in
10 such systems;

11 “(2) provide the public with an opportunity to
12 comment on proposed standards and guidelines;

13 “(3) submit to the Director of the Office of
14 Management and Budget for promulgation under
15 section 11331 of title 40, United States Code—

16 “(A) standards, as required under sub-
17 section (b)(1)(A), no later than 12 months after
18 the date of the enactment of this section; and

19 “(B) minimum information security re-
20 quirements for each category, as required under
21 subsection (b)(1)(C), no later than 36 months
22 after the date of the enactment of this section;

23 “(4) issue guidelines as required under sub-
24 section (b)(1)(B), no later than 18 months after the
25 date of the enactment of this Act;

1 “(5) ensure that such standards and guidelines
2 do not require specific technological solutions or
3 products, including any specific hardware or soft-
4 ware security solutions;

5 “(6) ensure that such standards and guidelines
6 provide for sufficient flexibility to permit alternative
7 solutions to provide equivalent levels of protection
8 for identified information security risks; and

9 “(7) use flexible, performance-based standards
10 and guidelines that, to the greatest extent possible,
11 permit the use of off-the-shelf commercially devel-
12 oped information security products.

13 “(d) The Institute shall—

14 “(1) submit standards developed pursuant to
15 subsection (a), along with recommendations as to
16 the extent to which these should be made compul-
17 sory and binding, to the Director of the Office of
18 Management and Budget for promulgation under
19 section 11331 of title 40, United States Code;

20 “(2) provide assistance to agencies regarding—

21 “(A) compliance with the standards and
22 guidelines developed under subsection (a);

23 “(B) detecting and handling information
24 security incidents; and

1 “(C) information security policies, proce-
2 dures, and practices;

3 “(3) conduct research, as needed, to determine
4 the nature and extent of information security
5 vulnerabilities and techniques for providing cost-ef-
6 fective information security;

7 “(4) develop and periodically revise performance
8 indicators and measures for agency information se-
9 curity policies and practices;

10 “(5) evaluate private sector information secu-
11 rity policies and practices and commercially available
12 information technologies to assess potential applica-
13 tion by agencies to strengthen information security;

14 “(6) evaluate security policies and practices de-
15 veloped for national security systems to assess po-
16 tential application by agencies to strengthen infor-
17 mation security;

18 “(7) periodically assess the effectiveness of
19 standards and guidelines developed under this sec-
20 tion and undertake revisions as appropriate;

21 “(8) solicit and consider the recommendations
22 of the Information Security and Privacy Advisory
23 Board, established by section 21, regarding stand-
24 ards and guidelines developed under subsection (a)
25 and submit such recommendations to the Director of

1 the Office of Management and Budget with such
2 standards submitted to the Director; and

3 “(9) prepare an annual public report on activi-
4 ties undertaken in the previous year, and planned
5 for the coming year, to carry out responsibilities
6 under this section.

7 “(e) As used in this section—

8 “(1) the term ‘agency’ has the same meaning as
9 provided in section 3502(1) of title 44, United
10 States Code;

11 “(2) the term ‘information security’ has the
12 same meaning as provided in section 3532(1) of
13 such title;

14 “(3) the term ‘information system’ has the
15 same meaning as provided in section 3502(8) of
16 such title;

17 “(4) the term ‘information technology’ has the
18 same meaning as provided in section 11101 of title
19 40, United States Code; and

20 “(5) the term ‘national security system’ has the
21 same meaning as provided in section 3532(b)(2) of
22 such title.”.

1 **SEC. 1004. INFORMATION SECURITY AND PRIVACY ADVI-**
2 **SORY BOARD.**

3 Section 21 of the National Institute of Standards and
4 Technology Act (15 U.S.C. 278g–4), is amended—

5 (1) in subsection (a), by striking “Computer
6 System Security and Privacy Advisory Board” and
7 inserting “Information Security and Privacy Advi-
8 sory Board”;

9 (2) in subsection (a)(1), by striking “computer
10 or telecommunications” and inserting “information
11 technology”;

12 (3) in subsection (a)(2)—

13 (A) by striking “computer or telecommuni-
14 cations technology” and inserting “information
15 technology”; and

16 (B) by striking “computer or telecommuni-
17 cations equipment” and inserting “information
18 technology”;

19 (4) in subsection (a)(3)—

20 (A) by striking “computer systems” and
21 inserting “information system”; and

22 (B) by striking “computer systems secu-
23 rity” and inserting “information security”;

24 (5) in subsection (b)(1) by striking “computer
25 systems security” and inserting “information secu-
26 rity”;

1 (6) in subsection (b) by striking paragraph (2)
2 and inserting the following:

3 “(2) to advise the Institute and the Director of
4 the Office of Management and Budget on informa-
5 tion security and privacy issues pertaining to Fed-
6 eral Government information systems, including
7 through review of proposed standards and guidelines
8 developed under section 20; and”;

9 (7) in subsection (b)(3) by inserting “annually”
10 after “report”;

11 (8) by inserting after subsection (e) the fol-
12 lowing new subsection:

13 “(f) The Board shall hold meetings at such locations
14 and at such time and place as determined by a majority
15 of the Board.”;

16 (9) by redesignating subsections (f) and (g) as
17 subsections (g) and (h), respectively; and

18 (10) by striking subsection (h), as redesignated
19 by paragraph (9), and inserting the following:

20 “(h) As used in this section, the terms “information
21 system” and “information technology” have the meanings
22 given in section 20.”.

23 **SEC. 1005. TECHNICAL AND CONFORMING AMENDMENTS.**

24 (a) FEDERAL COMPUTER SYSTEM SECURITY TRAIN-
25 ING AND PLAN.—

1 (1) REPEAL.—Section 11332 of title 40, United
2 States Code, is repealed.

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions at the beginning of chapter 113 of title 40,
5 United States Code, as amended by striking the item
6 relating to section 11332.

7 (b) FLOYD D. SPENCE NATIONAL DEFENSE AU-
8 THORIZATION ACT FOR FISCAL YEAR 2001.—The Floyd
9 D. Spence National Defense Authorization Act for Fiscal
10 Year 2001 (Public Law 106–398) is amended by striking
11 subtitle G of title X (44 U.S.C. 3531 note).

12 (c) PAPERWORK REDUCTION ACT.—(1) Section
13 3504(g) of title 44, United States Code, is amended—

14 (A) by adding “and” at the end of paragraph

15 (1);

16 (B) in paragraph (2)—

17 (i) by striking “sections 11331 and
18 11332(b) and (c) of title 40” and inserting
19 “section 11331 of title 40 and subchapter II of
20 this title”; and

21 (ii) by striking the semicolon and inserting
22 a period; and

23 (C) by striking paragraph (3).

24 (2) Section 3505 of such title is amended by adding
25 at the end the following:

1 “(c) INVENTORY OF INFORMATION SYSTEMS.—(1)

2 The head of each agency shall develop and maintain an
3 inventory of the information systems (including national
4 security systems) operated by or under the control of such
5 agency;

6 “(2) The identification of information systems in an
7 inventory under this subsection shall include an identifica-
8 tion of the interfaces between each such system and all
9 other systems or networks, including those not operated
10 by or under the control of the agency;

11 “(3) Such inventory shall be—

12 “(A) updated at least annually;

13 “(B) made available to the Comptroller Gen-
14 eral; and

15 “(C) used to support information resources
16 management, including—

17 “(i) preparation and maintenance of the
18 inventory of information resources under sec-
19 tion 3506(b)(4);

20 “(ii) information technology planning,
21 budgeting, acquisition, and management under
22 section 3506(h), subtitle III of title 40, and re-
23 lated laws and guidance;

1 “(iii) monitoring, testing, and evaluation of
2 information security controls under subchapter
3 II;

4 “(iv) preparation of the index of major in-
5 formation systems required under section
6 552(g) of title 5, United States Code; and

7 “(v) preparation of information system in-
8 ventories required for records management
9 under chapters 21, 29, 31, and 33.

10 “(4) The Director shall issue guidance for and over-
11 see the implementation of the requirements of this sub-
12 section.”.

13 (3) Section 3506(g) of such title is amended—

14 (A) by adding “and” at the end of paragraph

15 (1);

16 (B) in paragraph (2)—

17 (i) by striking “section 11332 of title 40”

18 and inserting “subchapter II of this chapter”;

19 and

20 (ii) by striking “; and” and inserting a pe-

21 riod; and

22 (C) by striking paragraph (3).

23 **SEC. 1006. CONSTRUCTION.**

24 Nothing in this Act, or the amendments made by this
25 Act, affects the authority of the National Institute of

1 Standards and Technology or the Department of Com-
2 merce relating to the development and promulgation of
3 standards or guidelines under paragraphs (1) and (2) of
4 section 20(a) of the National Institute of Standards and
5 Technology Act (15 U.S.C. 278g-3(a)).

6 **TITLE XI—DEPARTMENT OF**
7 **JUSTICE DIVISIONS**
8 **Subtitle A—Executive Office for**
9 **Immigration Review**

10 **SEC. 1101. LEGAL STATUS OF EOIR.**

11 (a) EXISTENCE OF EOIR.—There is in the Depart-
12 ment of Justice the Executive Office for Immigration Re-
13 view, which shall be subject to the direction and regulation
14 of the Attorney General under section 103(g) of the Immi-
15 gration and Nationality Act, as added by section 1102.

16 **SEC. 1102. AUTHORITIES OF THE ATTORNEY GENERAL.**

17 Section 103 of the Immigration and Nationality Act
18 (8 U.S.C. 1103) as amended by this Act, is further
19 amended by—

20 (1) amending the heading to read as follows:

21 “POWERS AND DUTIES OF THE SECRETARY, THE UNDER
22 SECRETARY, AND THE ATTORNEY GENERAL”;

23 (2) in subsection (a)—

24 (A) by inserting “Attorney General,” after
25 “President,”; and

1 (B) by redesignating paragraphs (8), (9),
2 (8) (as added by section 372 of Public Law
3 104–208), and (9) (as added by section 372 of
4 Public Law 104–208) as paragraphs (8), (9),
5 (10), and (11), respectively; and

6 (3) by adding at the end the following new sub-
7 section:

8 “(g) ATTORNEY GENERAL.—

9 “(1) IN GENERAL.—The Attorney General shall
10 have such authorities and functions under this Act
11 and all other laws relating to the immigration and
12 naturalization of aliens as were exercised by the Ex-
13 ecutive Office for Immigration Review, or by the At-
14 torney General with respect to the Executive Office
15 for Immigration Review, on the day before the effec-
16 tive date of the Immigration Reform, Accountability
17 and Security Enhancement Act of 2002.

18 “(2) POWERS.—The Attorney General shall es-
19 tablish such regulations, prescribe such forms of
20 bond, reports, entries, and other papers, issue such
21 instructions, review such administrative determina-
22 tions in immigration proceedings, delegate such au-
23 thority, and perform such other acts as the Attorney
24 General determines to be necessary for carrying out
25 this section.”.

1 **SEC. 1103. STATUTORY CONSTRUCTION.**

2 Nothing in this Act, any amendment made by this
3 Act, or in section 103 of the Immigration and Nationality
4 Act, as amended by section 1102, shall be construed to
5 limit judicial deference to regulations, adjudications, inter-
6 pretations, orders, decisions, judgments, or any other ac-
7 tions of the Secretary of Homeland Security or the Attor-
8 ney General.

9 **Subtitle B—Transfer of the Bureau**
10 **of Alcohol, Tobacco and Fire-**
11 **arms to the Department of Jus-**
12 **tice**

13 **SEC. 1111. BUREAU OF ALCOHOL, TOBACCO, FIREARMS,**
14 **AND EXPLOSIVES.**

15 (a) ESTABLISHMENT.—

16 (1) IN GENERAL.—There is established within
17 the Department of Justice under the general author-
18 ity of the Attorney General the Bureau of Alcohol,
19 Tobacco, Firearms, and Explosives (in this section
20 referred to as the “Bureau”).

21 (2) DIRECTOR.—There shall be at the head of
22 the Bureau a Director, Bureau of Alcohol, Tobacco,
23 Firearms, and Explosives (in this subtitle referred to
24 as the “Director”). The Director shall be appointed
25 by the Attorney General and shall perform such
26 functions as the Attorney General shall direct. The

1 Director shall receive compensation at the rate pre-
2 scribed by law under section 5314 of title V, United
3 States Code, for positions at level III of the Execu-
4 tive Schedule.

5 (3) COORDINATION.—The Attorney General,
6 acting through the Director and such other officials
7 of the Department of Justice as the Attorney Gen-
8 eral may designate, shall provide for the coordina-
9 tion of all firearms, explosives, tobacco enforcement,
10 and arson enforcement functions vested in the Attor-
11 ney General so as to assure maximum cooperation
12 between and among any officer, employee, or agency
13 of the Department of Justice involved in the per-
14 formance of these and related functions.

15 (4) PERFORMANCE OF TRANSFERRED FUNC-
16 TIONS.—The Attorney General may make such pro-
17 visions as the Attorney General determines appro-
18 priate to authorize the performance by any officer,
19 employee, or agency of the Department of Justice of
20 any function transferred to the Attorney General
21 under this section.

22 (b) RESPONSIBILITIES.—Subject to the direction of
23 the Attorney General, the Bureau shall be responsible for
24 investigating—

1 (1) criminal and regulatory violations of the
2 Federal firearms, explosives, arson, alcohol, and to-
3 bacco smuggling laws;

4 (2) the functions transferred by subsection (c);
5 and

6 (3) any other function related to the investiga-
7 tion of violent crime or domestic terrorism that is
8 delegated to the Bureau by the Attorney General.

9 (c) TRANSFER OF AUTHORITIES, FUNCTIONS, PER-
10 SONNEL, AND ASSETS TO THE DEPARTMENT OF JUS-
11 TICE.—

12 (1) IN GENERAL.—Subject to paragraph (2),
13 but notwithstanding any other provision of law,
14 there are transferred to the Department of Justice
15 the authorities, functions, personnel, and assets of
16 the Bureau of Alcohol, Tobacco and Firearms, which
17 shall be maintained as a distinct entity within the
18 Department of Justice, including the related func-
19 tions of the Secretary of the Treasury.

20 (2) ADMINISTRATION AND REVENUE COLLEC-
21 TION FUNCTIONS.—There shall be retained within
22 the Department of the Treasury the authorities,
23 functions, personnel, and assets of the Bureau of Al-
24 cohol, Tobacco and Firearms relating to the admin-
25 istration and enforcement of chapters 51 and 52 of

1 the Internal Revenue Code of 1986, sections 4181
2 and 4182 of the Internal Revenue Code of 1986,
3 and title 27, United States Code.

4 (3) BUILDING PROSPECTUS.—Prospectus PDC-
5 98W10, giving the General Services Administration
6 the authority for site acquisition, design, and con-
7 struction of a new headquarters building for the Bu-
8 reau of Alcohol, Tobacco and Firearms, is trans-
9 ferred, and deemed to apply, to the Bureau of Alco-
10 hol, Tobacco, Firearms, and Explosives established
11 in the Department of Justice under subsection (a).

12 (d) TAX AND TRADE BUREAU.—

13 (1) ESTABLISHMENT.—There is established
14 within the Department of the Treasury the Tax and
15 Trade Bureau.

16 (2) ADMINISTRATOR.—The Tax and Trade Bu-
17 reau shall be headed by an Administrator, who shall
18 perform such duties as assigned by the Under Sec-
19 retary for Enforcement of the Department of the
20 Treasury. The Administrator shall occupy a career-
21 reserved position within the Senior Executive Serv-
22 ice.

23 (3) RESPONSIBILITIES.—The authorities, func-
24 tions, personnel, and assets of the Bureau of Alco-
25 hol, Tobacco and Firearms that are not transferred

1 to the Department of Justice under this section shall
2 be retained and administered by the Tax and Trade
3 Bureau.

4 **SEC. 1112. TECHNICAL AND CONFORMING AMENDMENTS.**

5 (a) The Inspector General Act of 1978 (5 U.S.C.
6 App.) is amended—

7 (1) in section 8D(b)(1) by striking “Bureau of
8 Alcohol, Tobacco and Firearms” and inserting “Tax
9 and Trade Bureau”; and

10 (2) in section 9(a)(1)(L)(i), by striking “Bu-
11 reau of Alcohol, Tobacco, and Firearms” and insert-
12 ing “Tax and Trade Bureau”.

13 (b) Section 1109(c)(2)(A)(i) of the Consolidated Om-
14 nibus Budget Reconciliation Act of 1985 (7 U.S.C. 1445-
15 3(c)(2)(A)(i)) is amended by striking “(on ATF Form
16 3068) by manufacturers of tobacco products to the Bu-
17 reau of Alcohol, Tobacco and Firearms” and inserting “by
18 manufacturers of tobacco products to the Tax and Trade
19 Bureau”.

20 (c) Section 2(4)(J) of the Enhanced Border Security
21 and Visa Entry Reform Act of 2002 (Public Law 107-
22 173; 8 U.S.C.A. 1701(4)(J)) is amended by striking “Bu-
23 reau of Alcohol, Tobacco, and Firearms” and inserting
24 “Bureau of Alcohol, Tobacco, Firearms, and Explosives,
25 Department of Justice”.

1 (d) Section 3(1)(E) of the Firefighters’ Safety Study
2 Act (15 U.S.C. 2223b(1)(E)) is amended by striking “the
3 Bureau of Alcohol, Tobacco, and Firearms,” and inserting
4 “the Bureau of Alcohol, Tobacco, Firearms, and Explo-
5 sives, Department of Justice,”.

6 (e) Chapter 40 of title 18, United States Code, is
7 amended—

8 (1) by striking section 841(k) and inserting the
9 following:

10 “(k) ‘Attorney General’ means the Attorney General
11 of the United States.”;

12 (2) in section 846(a), by striking “the Attorney Gen-
13 eral and the Federal Bureau of Investigation, together
14 with the Secretary” and inserting “the Federal Bureau
15 of Investigation, together with the Bureau of Alcohol, To-
16 bacco, Firearms, and Explosives”; and

17 (3) by striking “Secretary” each place it ap-
18 pears and inserting “Attorney General”.

19 (f) Chapter 44 of title 18, United States Code, is
20 amended—

21 (1) in section 921(a)(4)(B), by striking “Sec-
22 retary” and inserting “Attorney General”;

23 (2) in section 921(a)(4), by striking “Secretary
24 of the Treasury” and inserting “Attorney General”;

1 (3) in section 921(a), by striking paragraph
2 (18) and inserting the following:

3 “(18) The term ‘Attorney General’ means the
4 Attorney General of the United States”;

5 (4) in section 922(p)(5)(A), by striking “after
6 consultation with the Secretary” and inserting
7 “after consultation with the Attorney General”;

8 (5) in section 923(l), by striking “Secretary of
9 the Treasury” and inserting “Attorney General”;
10 and

11 (6) by striking “Secretary” each place it ap-
12 pears, except before “of the Army” in section
13 921(a)(4) and before “of Defense” in section
14 922(p)(5)(A), and inserting the term “Attorney
15 General”.

16 (g) Section 1261(a) of title 18, United States Code,
17 is amended to read as follows:

18 “(a) The Attorney General—

19 “(1) shall enforce the provisions of this chapter;
20 and

21 “(2) has the authority to issue regulations to
22 carry out the provisions of this chapter.”.

23 (h) Section 1952(c) of title 18, United States Code,
24 is amended by striking “Secretary of the Treasury” and
25 inserting “Attorney General”.

1 (i) Chapter 114 of title 18, United States Code, is
2 amended—

3 (1) by striking section 2341(5), and inserting
4 the following:

5 “(5) the term ‘Attorney General’ means the At-
6 torney General of the United States”; and

7 (2) by striking “Secretary” each place it ap-
8 pears and inserting “Attorney General”.

9 (j) Section 6103(i)(8)(A)(i) of the Internal Revenue
10 Code of 1986 (relating to confidentiality and disclosure
11 of returns and return information) is amended by striking
12 “or the Bureau of Alcohol, Tobacco and Firearms” and
13 inserting “, the Bureau of Alcohol, Tobacco, Firearms,
14 and Explosives, Department of Justice, or the Tax and
15 Trade Bureau, Department of the Treasury,”.

16 (k) Section 7801(a) of the Internal Revenue Code of
17 1986 (relating to the authority of the Department of the
18 Treasury) is amended—

19 (1) by striking “SECRETARY.—Except” and in-
20 serting “SECRETARY.—

21 “(1) IN GENERAL.—Except”; and

22 (2) by adding at the end the following:

23 “(2) ADMINISTRATION AND ENFORCEMENT OF
24 CERTAIN PROVISIONS BY ATTORNEY GENERAL.—

1 “(A) IN GENERAL.—The administration
2 and enforcement of the following provisions of
3 this title shall be performed by or under the su-
4 pervision of the Attorney General; and the term
5 ‘Secretary’ or ‘Secretary of the Treasury’ shall,
6 when applied to those provisions, mean the At-
7 torney General; and the term ‘internal revenue
8 officer’ shall, when applied to those provisions,
9 mean any officer of the Bureau of Alcohol, To-
10 bacco, Firearms, and Explosives so designated
11 by the Attorney General:

12 “(i) Chapter 53.

13 “(ii) Chapters 61 through 80, to the
14 extent such chapters relate to the enforce-
15 ment and administration of the provisions
16 referred to in clause (i).

17 “(B) USE OF EXISTING RULINGS AND IN-
18 TERPRETATIONS.—Nothing in this Act alters or
19 repeals the rulings and interpretations of the
20 Bureau of Alcohol, Tobacco, and Firearms in
21 effect on the effective date of the Homeland Se-
22 curity Act of 2002, which concern the provi-
23 sions of this title referred to in subparagraph
24 (A). The Attorney General shall consult with
25 the Secretary to achieve uniformity and consist-

1 ency in administering provisions under chapter
2 53 of title 26, United States Code.”.

3 (l) Section 2006(2) of title 28, United States Code,
4 is amended by inserting “, the Director, Bureau of Alco-
5 hol, Tobacco, Firearms, and Explosives, Department of
6 Justice,” after “the Secretary of the Treasury”.

7 (m) Section 713 of title 31, United States Code, is
8 amended—

9 (1) by striking the section heading and insert-
10 ing the following:

11 **“§ 713. Audit of Internal Revenue Service, Tax and**
12 **Trade Bureau, and Bureau of Alcohol, To-**
13 **bacco, Firearms, and Explosives”;**

14 (2) in subsection (a), by striking “Bureau of
15 Alcohol, Tobacco, and Firearms,” and inserting
16 “Tax and Trade Bureau, Department of the Treas-
17 ury, and the Bureau of Alcohol, Tobacco, Firearms,
18 and Explosives, Department of Justice”; and

19 (3) in subsection (b)

20 (A) in paragraph (1)(B), by striking “or
21 the Bureau” and inserting “or either Bureau”;

22 (B) in paragraph (2)—

23 (i) by striking “or the Bureau” and
24 inserting “or either Bureau”; and

1 (ii) by striking “and the Director of
2 the Bureau” and inserting “the Tax and
3 Trade Bureau, Department of the Treas-
4 ury, and the Director of the Bureau of Al-
5 cohol, Tobacco, Firearms, and Explosives,
6 Department of Justice”; and

7 (C) in paragraph (3), by striking “or the
8 Bureau” and inserting “or either Bureau”.

9 (n) Section 9703 of title 31, United States Code, is
10 amended—

11 (1) in subsection (a)(2)(B)—

12 (A) in clause (iii)(III), by inserting “and”
13 after the semicolon;

14 (B) in clause (iv), by striking “; and” and
15 inserting a period; and

16 (C) by striking clause (v);

17 (2) by striking subsection (o);

18 (3) by redesignating existing subsection (p) as
19 subsection (o); and

20 (4) in subsection (o)(1), as redesignated by
21 paragraph (3), by striking “Bureau of Alcohol, To-
22 bacco and Firearms” and inserting “Tax and Trade
23 Bureau”.

24 (o) Section 609N(2)(L) of the Justice Assistance Act
25 of 1984 (42 U.S.C. 10502(2)(L)) is amended by striking

1 “Bureau of Alcohol, Tobacco, and Firearms” and insert-
2 ing “Bureau of Alcohol, Tobacco, Firearms, and Explo-
3 sives, Department of Justice”.

4 (p) Section 32401(a) of the Violent Crime Control
5 and Law Enforcement Act of 1994 (42 U.S.C. 13921(a))
6 is amended—

7 (1) by striking “Secretary of the Treasury”
8 each place it appears and inserting “Attorney Gen-
9 eral”; and

10 (2) in subparagraph (3)(B), by striking “Bu-
11 reau of Alcohol, Tobacco and Firearms” and insert-
12 ing “Bureau of Alcohol, Tobacco, Firearms, and Ex-
13 plosives, Department of Justice”.

14 (q) Section 80303 of title 49, United States Code,
15 is amended—

16 (1) by inserting “or, when the violation of this
17 chapter involves contraband described in paragraph
18 (2) or (5) of section 80302(a), the Attorney Gen-
19 eral” after “section 80304 of this title.”; and

20 (2) by inserting “, the Attorney General,” after
21 “by the Secretary”.

22 (r) Section 80304 of title 49, United States Code,
23 is amended—

24 (1) in subsection (a), by striking “(b) and (c)”
25 and inserting “(b), (c), and (d)”;

1 forfeiture provisions of the laws of the United States, may
2 carry firearms, serve warrants and subpoenas issued
3 under the authority of the United States and make arrests
4 without warrant for any offense against the United States
5 committed in their presence, or for any felony cognizable
6 under the laws of the United States if they have reason-
7 able grounds to believe that the person to be arrested has
8 committed or is committing such felony.

9 “(b) Any special agent of the Bureau of Alcohol, To-
10 bacco, Firearms, and Explosives may, in respect to the
11 performance of his or her duties, make seizures of prop-
12 erty subject to forfeiture to the United States.

13 “(c)(1) Except as provided in paragraphs (2) and (3),
14 and except to the extent that such provisions conflict with
15 the provisions of section 983 of title 18, United States
16 Code, insofar as section 983 applies, the provisions of the
17 Customs laws relating to—

18 “(A) the seizure, summary and judicial for-
19 feiture, and condemnation of property;

20 “(B) the disposition of such property;

21 “(C) the remission or mitigation of such for-
22 feiture; and

23 “(D) the compromise of claims,

24 shall apply to seizures and forfeitures incurred, or alleged
25 to have been incurred, under any applicable provision of

1 law enforced or administered by the Bureau of Alcohol,
2 Tobacco, Firearms, and Explosives.

3 “(2) For purposes of paragraph (1), duties that are
4 imposed upon a customs officer or any other person with
5 respect to the seizure and forfeiture of property under the
6 customs laws of the United States shall be performed with
7 respect to seizures and forfeitures of property under this
8 section by such officers, agents, or any other person as
9 may be authorized or designated for that purpose by the
10 Attorney General.

11 “(3) Notwithstanding any other provision of law, the
12 disposition of firearms forfeited by reason of a violation
13 of any law of the United States shall be governed by the
14 provisions of section 5872(b) of the Internal Revenue Code
15 of 1986.”.

16 **SEC. 1114. EXPLOSIVES TRAINING AND RESEARCH FACIL-**
17 **ITY.**

18 (a) **ESTABLISHMENT.**—There is established within
19 the Bureau an Explosives Training and Research Facility
20 at Fort AP Hill, Fredericksburg, Virginia.

21 (b) **PURPOSE.**—The facility established under sub-
22 section (a) shall be utilized to train Federal, State, and
23 local law enforcement officers to—

24 (1) investigate bombings and explosions;

1 (2) properly handle, utilize, and dispose of ex-
2 plosive materials and devices;

3 (3) train canines on explosive detection; and

4 (4) conduct research on explosives.

5 (c) AUTHORIZATION OF APPROPRIATIONS.—

6 (1) IN GENERAL.—There are authorized to be
7 appropriated such sums as may be necessary to es-
8 tablish and maintain the facility established under
9 subsection (a).

10 (2) AVAILABILITY OF FUNDS.—Any amounts
11 appropriated pursuant to paragraph (1) shall remain
12 available until expended.

13 **SEC. 1115. PERSONNEL MANAGEMENT DEMONSTRATION**
14 **PROJECT.**

15 Notwithstanding any other provision of law, the Per-
16 sonnel Management Demonstration Project established
17 under section 102 of title I of Division C of the Omnibus
18 Consolidated and Emergency Supplemental Appropria-
19 tions Act for Fiscal Year 1999 (Pub. L. 105–277; 122
20 Stat. 2681–585) shall be transferred to the Attorney Gen-
21 eral of the United States for continued use by the Bureau
22 of Alcohol, Tobacco, Firearms, and Explosives, Depart-
23 ment of Justice, and the Secretary of the Treasury for
24 continued use by the Tax and Trade Bureau.

1 **Subtitle C—Explosives**

2 **SEC. 1121. SHORT TITLE.**

3 This subtitle may be referred to as the “Safe Explo-
4 sives Act”.

5 **SEC. 1122. PERMITS FOR PURCHASERS OF EXPLOSIVES.**

6 (a) DEFINITIONS.—Section 841 of title 18, United
7 States Code, is amended—

8 (1) by striking subsection (j) and inserting the
9 following:

10 “(j) ‘Permittee’ means any user of explosives
11 for a lawful purpose, who has obtained either a user
12 permit or a limited permit under the provisions of
13 this chapter.”; and

14 (2) by adding at the end the following:

15 “(r) ‘Alien’ means any person who is not a cit-
16 izen or national of the United States.

17 “(s) ‘Responsible person’ means an individual
18 who has the power to direct the management and
19 policies of the applicant pertaining to explosive ma-
20 terials.”.

21 (b) PERMITS FOR PURCHASE OF EXPLOSIVES.—Sec-
22 tion 842 of title 18, United States Code, is amended—

23 (1) in subsection (a)(2), by striking “and” at
24 the end;

1 (2) by striking subsection (a)(3) and inserting
2 the following:

3 “(3) other than a licensee or permittee
4 knowingly—

5 “(A) to transport, ship, cause to be trans-
6 ported, or receive any explosive materials; or

7 “(B) to distribute explosive materials to
8 any person other than a licensee or permittee;
9 or

10 “(4) who is a holder of a limited permit—

11 “(A) to transport, ship, cause to be trans-
12 ported, or receive in interstate or foreign com-
13 merce any explosive materials; or

14 “(B) to receive explosive materials from a
15 licensee or permittee, whose premises are lo-
16 cated outside the State of residence of the lim-
17 ited permit holder, or on more than 6 separate
18 occasions, during the period of the permit, to
19 receive explosive materials from 1 or more li-
20 censees or permittees whose premises are lo-
21 cated within the State of residence of the lim-
22 ited permit holder.”; and

23 (3) by striking subsection (b) and inserting the
24 following:

1 “(b) It shall be unlawful for any licensee or permittee
2 to knowingly distribute any explosive materials to any per-
3 son other than—

4 “(1) a licensee;

5 “(2) a holder of a user permit; or

6 “(3) a holder of a limited permit who is a resi-
7 dent of the State where distribution is made and in
8 which the premises of the transferor are located.”.

9 (c) LICENSES AND USER PERMITS.—Section 843(a)
10 of title 18, United States Code, is amended—

11 (1) in the first sentence—

12 (A) by inserting “or limited permit” after
13 “user permit”; and

14 (B) by inserting before the period at the
15 end the following: “, including the names of and
16 appropriate identifying information regarding
17 all employees who will be authorized by the ap-
18 plicant to possess explosive materials, as well as
19 fingerprints and a photograph of each respon-
20 sible person”;

21 (2) in the second sentence, by striking “\$200
22 for each” and inserting “\$50 for a limited permit
23 and \$200 for any other”; and

24 (3) by striking the third sentence and inserting
25 “Each license or user permit shall be valid for not

1 longer than 3 years from the date of issuance and
2 each limited permit shall be valid for not longer than
3 1 year from the date of issuance. Each license or
4 permit shall be renewable upon the same conditions
5 and subject to the same restrictions as the original
6 license or permit, and upon payment of a renewal
7 fee not to exceed one-half of the original fee.”.

8 (d) CRITERIA FOR APPROVING LICENSES AND PER-
9 MITS.—Section 843(b) of title 18, United States Code, is
10 amended—

11 (1) by striking paragraph (1) and inserting the
12 following:

13 “(1) the applicant (or, if the applicant is a corpora-
14 tion, partnership, or association, each responsible person
15 with respect to the applicant) is not a person described
16 in section 842(i);”;

17 (2) in paragraph (4)—

18 (A) by inserting “(A) the Secretary verifies
19 by inspection or, if the application is for an
20 original limited permit or the first or second re-
21 newal of such a permit, by such other means as
22 the Secretary determines appropriate, that” be-
23 fore “the applicant”; and

24 (B) by adding at the end the following:

1 “(B) subparagraph (A) shall not apply to
2 an applicant for the renewal of a limited permit
3 if the Secretary has verified, by inspection with-
4 in the preceding 3 years, the matters described
5 in subparagraph (A) with respect to the appli-
6 cant; and”;

7 (3) in paragraph (5), by striking the period at
8 the end and inserting a semicolon; and

9 (4) by adding at the end the following:

10 “(6) none of the employees of the applicant who
11 will be authorized by the applicant to possess explo-
12 sive materials is any person described in section
13 842(i); and

14 “(7) in the case of a limited permit, the appli-
15 cant has certified in writing that the applicant will
16 not receive explosive materials on more than 6 sepa-
17 rate occasions during the 12-month period for which
18 the limited permit is valid.”.

19 (e) APPLICATION APPROVAL.—Section 843(c) of title
20 18, United States Code, is amended by striking “forty-
21 five days” and inserting “90 days for licenses and per-
22 mits,”.

23 (f) INSPECTION AUTHORITY.—Section 843(f) of title
24 18, United States Code, is amended—

25 (1) in the first sentence—

1 (A) by striking “permittees” and inserting
2 “holders of user permits”; and

3 (B) by inserting “licensees and permittees”
4 before “shall submit”;

5 (2) in the second sentence, by striking “per-
6 mittee” the first time it appears and inserting “hold-
7 er of a user permit”; and

8 (3) by adding at the end the following: “The
9 Secretary may inspect the places of storage for ex-
10 plosive materials of an applicant for a limited permit
11 or, at the time of renewal of such permit, a holder
12 of a limited permit, only as provided in subsection
13 (b)(4).

14 (g) POSTING OF PERMITS.—Section 843(g) of title
15 18, United States Code, is amended by inserting “user”
16 before “permits”.

17 (h) BACKGROUND CHECKS; CLEARANCES.—Section
18 843 of title 18, United States Code, is amended by adding
19 at the end the following:

20 “(h)(1) If the Secretary receives, from an employer,
21 the name and other identifying information of a respon-
22 sible person or an employee who will be authorized by the
23 employer to possess explosive materials in the course of
24 employment with the employer, the Secretary shall deter-
25 mine whether the responsible person or employee is one

1 of the persons described in any paragraph of section
2 842(i). In making the determination, the Secretary may
3 take into account a letter or document issued under para-
4 graph (2).

5 “(2)(A) If the Secretary determines that the respon-
6 sible person or the employee is not one of the persons de-
7 scribed in any paragraph of section 842(i), the Secretary
8 shall notify the employer in writing or electronically of the
9 determination and issue, to the responsible person or em-
10 ployee, a letter of clearance, which confirms the deter-
11 mination.

12 “(B) If the Secretary determines that the responsible
13 person or employee is one of the persons described in any
14 paragraph of section 842(i), the Secretary shall notify the
15 employer in writing or electronically of the determination
16 and issue to the responsible person or the employee, as
17 the case may be, a document that—

18 “(i) confirms the determination;

19 “(ii) explains the grounds for the determina-
20 tion;

21 “(iii) provides information on how the disability
22 may be relieved; and

23 “(iv) explains how the determination may be
24 appealed.”.

25 (i) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall take effect 180 days after the date
3 of enactment of this Act.

4 (2) EXCEPTION.—Notwithstanding any provi-
5 sion of this Act, a license or permit issued under
6 section 843 of title 18, United States Code, before
7 the date of enactment of this Act, shall remain valid
8 until that license or permit is revoked under section
9 843(d) or expires, or until a timely application for
10 renewal is acted upon.

11 **SEC. 1123. PERSONS PROHIBITED FROM RECEIVING OR**
12 **POSSESSING EXPLOSIVE MATERIALS.**

13 (a) DISTRIBUTION OF EXPLOSIVES.—Section 842(d)
14 of title 18, United States Code, is amended—

15 (1) in paragraph (5), by striking “or” at the
16 end;

17 (2) in paragraph (6), by striking the period at
18 the end and inserting “or who has been committed
19 to a mental institution;”; and

20 (3) by adding at the end the following:

21 “(7) is an alien, other than an alien who—

22 “(A) is lawfully admitted for permanent
23 residence (as defined in section 101 (a)(20) of
24 the Immigration and Nationality Act); or

1 “(B) is in lawful nonimmigrant status, is
2 a refugee admitted under section 207 of the
3 Immigration and Nationality Act (8 U.S.C.
4 1157), or is in asylum status under section 208
5 of the Immigration and Nationality Act (8
6 U.S.C. 1158), and—

7 “(i) is a foreign law enforcement offi-
8 cer of a friendly foreign government, as de-
9 termined by the Secretary in consultation
10 with the Secretary of State, entering the
11 United States on official law enforcement
12 business, and the shipping, transporting,
13 possession, or receipt of explosive materials
14 is in furtherance of this official law en-
15 forcement business;

16 “(ii) is a person having the power to
17 direct or cause the direction of the man-
18 agement and policies of a corporation,
19 partnership, or association licensed pursu-
20 ant to section 843(a), and the shipping,
21 transporting, possession, or receipt of ex-
22 plosive materials is in furtherance of such
23 power;

24 “(iii) is a member of a North Atlantic
25 Treaty Organization (NATO) or other

1 friendly foreign military force, as deter-
2 mined by the Secretary in consultation
3 with the Secretary of Defense, (whether or
4 not admitted in a nonimmigrant status)
5 who is present in the United States under
6 military orders for training or other mili-
7 tary purpose authorized by the United
8 States, and the shipping, transporting,
9 possession, or receipt of explosive materials
10 is in furtherance of the military purpose;
11 or

12 “(iv) is lawfully present in the United
13 States in cooperation with the Director of
14 Central Intelligence, and the shipment,
15 transportation, receipt, or possession of the
16 explosive materials is in furtherance of
17 such cooperation;

18 “(8) has been discharged from the armed forces
19 under dishonorable conditions;

20 “(9) having been a citizen of the United States,
21 has renounced the citizenship of that person.”.

22 (b) POSSESSION OF EXPLOSIVE MATERIALS.—Sec-
23 tion 842(i) of title 18, United States Code, is amended—

24 (1) in paragraph (3), by striking “or” at the
25 end; and

1 (2) by inserting after paragraph (4) the fol-
2 lowing:

3 “(5) who is an alien, other than an alien who—

4 “(A) is lawfully admitted for permanent
5 residence (as that term is defined in section
6 101(a)(20) of the Immigration and Nationality
7 Act); or

8 “(B) is in lawful nonimmigrant status, is
9 a refugee admitted under section 207 of the
10 Immigration and Nationality Act (8 U.S.C.
11 1157), or is in asylum status under section 208
12 of the Immigration and Nationality Act (8
13 U.S.C. 1158), and—

14 “(i) is a foreign law enforcement offi-
15 cer of a friendly foreign government, as de-
16 termined by the Secretary in consultation
17 with the Secretary of State, entering the
18 United States on official law enforcement
19 business, and the shipping, transporting,
20 possession, or receipt of explosive materials
21 is in furtherance of this official law en-
22 forcement business;

23 “(ii) is a person having the power to
24 direct or cause the direction of the man-
25 agement and policies of a corporation,

1 partnership, or association licensed pursu-
2 ant to section 843(a), and the shipping,
3 transporting, possession, or receipt of ex-
4 plosive materials is in furtherance of such
5 power;

6 “(iii) is a member of a North Atlantic
7 Treaty Organization (NATO) or other
8 friendly foreign military force, as deter-
9 mined by the Secretary in consultation
10 with the Secretary of Defense, (whether or
11 not admitted in a nonimmigrant status)
12 who is present in the United States under
13 military orders for training or other mili-
14 tary purpose authorized by the United
15 States, and the shipping, transporting,
16 possession, or receipt of explosive materials
17 is in furtherance of the military purpose;
18 or

19 “(iv) is lawfully present in the United
20 States in cooperation with the Director of
21 Central Intelligence, and the shipment,
22 transportation, receipt, or possession of the
23 explosive materials is in furtherance of
24 such cooperation;

1 “(6) who has been discharged from the armed
2 forces under dishonorable conditions;

3 “(7) who, having been a citizen of the United
4 States, has renounced the citizenship of that per-
5 son”; and

6 (3) by inserting “or affecting” before “inter-
7 state” each place that term appears.

8 **SEC. 1124. REQUIREMENT TO PROVIDE SAMPLES OF EX-**
9 **PLOSIVE MATERIALS AND AMMONIUM NI-**
10 **TRATE.**

11 Section 843 of title 18, United States Code, as
12 amended by this Act, is amended by adding at the end
13 the following:

14 “(i) FURNISHING OF SAMPLES.—

15 “(1) IN GENERAL.—Licensed manufacturers
16 and licensed importers and persons who manufac-
17 ture or import explosive materials or ammonium ni-
18 trate shall, when required by letter issued by the
19 Secretary, furnish—

20 “(A) samples of such explosive materials or
21 ammonium nitrate;

22 “(B) information on chemical composition
23 of those products; and

24 “(C) any other information that the Sec-
25 retary determines is relevant to the identifica-

1 tion of the explosive materials or to identifica-
2 tion of the ammonium nitrate.

3 “(2) REIMBURSEMENT.—The Secretary shall,
4 by regulation, authorize reimbursement of the fair
5 market value of samples furnished pursuant to this
6 subsection, as well as the reasonable costs of ship-
7 ment.”.

8 **SEC. 1125. DESTRUCTION OF PROPERTY OF INSTITUTIONS**
9 **RECEIVING FEDERAL FINANCIAL ASSIST-**
10 **ANCE.**

11 Section 844(f)(1) of title 18, United States Code, is
12 amended by inserting before the word “shall” the fol-
13 lowing: “or any institution or organization receiving Fed-
14 eral financial assistance,”.

15 **SEC. 1126. RELIEF FROM DISABILITIES.**

16 Section 845(b) of title 18, United States Code, is
17 amended to read as follows:

18 “(b)(1) A person who is prohibited from shipping,
19 transporting, receiving, or possessing any explosive under
20 section 842(i) may apply to the Secretary for relief from
21 such prohibition.

22 “(2) The Secretary may grant the relief requested
23 under paragraph (1) if the Secretary determines that the
24 circumstances regarding the applicability of section 842(i),
25 and the applicant’s record and reputation, are such that

1 the applicant will not be likely to act in a manner dan-
2 gerous to public safety and that the granting of such relief
3 is not contrary to the public interest.

4 “(3) A licensee or permittee who applies for relief,
5 under this subsection, from the disabilities incurred under
6 this chapter as a result of an indictment for or conviction
7 of a crime punishable by imprisonment for a term exceed-
8 ing 1 year shall not be barred by such disability from fur-
9 ther operations under the license or permit pending final
10 action on an application for relief filed pursuant to this
11 section.”.

12 **SEC. 1127. THEFT REPORTING REQUIREMENT.**

13 Section 844 of title 18, United States Code, is
14 amended by adding at the end the following:

15 “(p) THEFT REPORTING REQUIREMENT.—

16 “(1) IN GENERAL.—A holder of a license or
17 permit who knows that explosive materials have been
18 stolen from that licensee or permittee, shall report
19 the theft to the Secretary not later than 24 hours
20 after the discovery of the theft.

21 “(2) PENALTY.—A holder of a license or permit
22 who does not report a theft in accordance with para-
23 graph (1), shall be fined not more than \$10,000, im-
24 prisoned not more than 5 years, or both.”.

1 **SEC. 1128. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 necessary to carry out this subtitle and the amendments
4 made by this subtitle.

5 **TITLE XII—AIRLINE WAR RISK**
6 **INSURANCE LEGISLATION**

7 **SEC. 1201. AIR CARRIER LIABILITY FOR THIRD PARTY**
8 **CLAIMS ARISING OUT OF ACTS OF TER-**
9 **RORISM.**

10 Section 44303 of title 49, United States Code, is
11 amended—

12 (1) by inserting “(a) IN GENERAL.—” before “The
13 Secretary of Transportation”;

14 (2) by moving the text of paragraph (2) of sec-
15 tion 201(b) of the Air Transportation Safety and
16 System Stabilization Act (115 Stat. 235) to the end
17 and redesignating such paragraph as subsection (b);

18 (3) in subsection (b) (as so redesignated)—

19 (A) by striking the subsection heading and
20 inserting “AIR CARRIER LIABILITY FOR THIRD
21 PARTY CLAIMS ARISING OUT OF ACTS OF TER-
22 RORISM.—”;

23 (B) in the first sentence by striking “the
24 180-day period following the date of enactment
25 of this Act, the Secretary of Transportation”
26 and inserting “the period beginning on Sep-

1 tember 22, 2001, and ending on December 31,
2 2003, the Secretary”; and

3 (C) in the last sentence by striking “this
4 paragraph” and inserting “this subsection”.

5 **SEC. 1202. EXTENSION OF INSURANCE POLICIES.**

6 Section 44302 of title 49, United States Code, is
7 amended by adding at the end the following:

8 “(f) EXTENSION OF POLICIES.—

9 “(1) IN GENERAL.—The Secretary shall extend
10 through August 31, 2003, and may extend through
11 December 31, 2003, the termination date of any in-
12 surance policy that the Department of Transpor-
13 tation issued to an air carrier under subsection (a)
14 and that is in effect on the date of enactment of this
15 subsection on no less favorable terms to the air car-
16 rier than existed on June 19, 2002; except that the
17 Secretary shall amend the insurance policy, subject
18 to such terms and conditions as the Secretary may
19 prescribe, to add coverage for losses or injuries to
20 aircraft hulls, passengers, and crew at the limits car-
21 ried by air carriers for such losses and injuries as
22 of such date of enactment and at an additional pre-
23 mium comparable to the premium charged for third-
24 party casualty coverage under such policy.

1 “(2) SPECIAL RULES.—Notwithstanding para-
2 graph (1)—

3 “(A) in no event shall the total premium
4 paid by the air carrier for the policy, as amend-
5 ed, be more than twice the premium that the
6 air carrier was paying to the Department of
7 Transportation for its third party policy as of
8 June 19, 2002; and

9 “(B) the coverage in such policy shall
10 begin with the first dollar of any covered loss
11 that is incurred.”.

12 **SEC. 1203. CORRECTION OF REFERENCE.**

13 Effective November 19, 2001, section 147 of the
14 Aviation and Transportation Security Act (Public Law
15 107–71) is amended by striking “(b)” and inserting “(c)”.

16 **SEC. 1204. REPORT.**

17 Not later than 90 days after the date of enactment
18 of this Act, the Secretary shall transmit to the Committee
19 on Commerce, Science, and Transportation of the Senate
20 and the Committee on Transportation and Infrastructure
21 of the House of Representatives a report that—

22 (A) evaluates the availability and cost of
23 commercial war risk insurance for air carriers
24 and other aviation entities for passengers and
25 third parties;

1 (B) analyzes the economic effect upon air
 2 carriers and other aviation entities of available
 3 commercial war risk insurance; and

4 (C) describes the manner in which the De-
 5 partment could provide an alternative means of
 6 providing aviation war risk reinsurance covering
 7 passengers, crew, and third parties through use
 8 of a risk-retention group or by other means.

9 **TITLE XIII—FEDERAL**
 10 **WORKFORCE IMPROVEMENT**
 11 **Subtitle A—Chief Human Capital**
 12 **Officers**

13 **SEC. 1301. SHORT TITLE.**

14 This title may be cited as the “Chief Human Capital
 15 Officers Act of 2002”.

16 **SEC. 1302. AGENCY CHIEF HUMAN CAPITAL OFFICERS.**

17 (a) **IN GENERAL.**—Part II of title 5, United States
 18 Code, is amended by inserting after chapter 13 the fol-
 19 lowing:

20 **“CHAPTER 14—AGENCY CHIEF HUMAN**
 21 **CAPITAL OFFICERS**

“Sec.

“1401. Establishment of agency Chief Human Capital Officers.

“1402. Authority and functions of agency Chief Human Capital Officers.

1 **“§ 1401. Establishment of agency Chief Human Cap-**
2 **ital Officers**

3 “The head of each agency referred to under para-
4 graphs (1) and (2) of section 901(b) of title 31 shall ap-
5 point or designate a Chief Human Capital Officer, who
6 shall—

7 “(1) advise and assist the head of the agency
8 and other agency officials in carrying out the agen-
9 cy’s responsibilities for selecting, developing, train-
10 ing, and managing a high-quality, productive work-
11 force in accordance with merit system principles;

12 “(2) implement the rules and regulations of the
13 President and the Office of Personnel Management
14 and the laws governing the civil service within the
15 agency; and

16 “(3) carry out such functions as the primary
17 duty of the Chief Human Capital Officer.

18 **“§ 1402. Authority and functions of agency Chief**
19 **Human Capital Officers**

20 “(a) The functions of each Chief Human Capital Of-
21 ficer shall include—

22 “(1) setting the workforce development strategy
23 of the agency;

24 “(2) assessing workforce characteristics and fu-
25 ture needs based on the agency’s mission and stra-
26 tegic plan;

1 “(3) aligning the agency’s human resources
2 policies and programs with organization mission,
3 strategic goals, and performance outcomes;

4 “(4) developing and advocating a culture of
5 continuous learning to attract and retain employees
6 with superior abilities;

7 “(5) identifying best practices and
8 benchmarking studies, and

9 “(6) applying methods for measuring intellec-
10 tual capital and identifying links of that capital to
11 organizational performance and growth.

12 “(b) In addition to the authority otherwise provided
13 by this section, each agency Chief Human Capital
14 Officer—

15 “(1) shall have access to all records, reports,
16 audits, reviews, documents, papers, recommenda-
17 tions, or other material that—

18 “(A) are the property of the agency or are
19 available to the agency; and

20 “(B) relate to programs and operations
21 with respect to which that agency Chief Human
22 Capital Officer has responsibilities under this
23 chapter; and

24 “(2) may request such information or assist-
25 ance as may be necessary for carrying out the duties

1 and responsibilities provided by this chapter from
 2 any Federal, State, or local governmental entity.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—

4 The table of chapters for chapters for part II of title 5,
 5 United States Code, is amended by inserting after the
 6 item relating to chapter 13 the following:

“14. **Agency Chief Human Capital Officers** 1401”.

7 **SEC. 1303. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.**

8 (a) ESTABLISHMENT.—There is established a Chief
 9 Human Capital Officers Council, consisting of—

10 (1) the Director of the Office of Personnel
 11 Management, who shall act as chairperson of the
 12 Council;

13 (2) the Deputy Director for Management of the
 14 Office of Management and Budget, who shall act as
 15 vice chairperson of the Council; and

16 (3) the Chief Human Capital Officers of Execu-
 17 tive departments and any other members who are
 18 designated by the Director of the Office of Personnel
 19 Management.

20 (b) FUNCTIONS.—The Chief Human Capital Officers
 21 Council shall meet periodically to advise and coordinate
 22 the activities of the agencies of its members on such mat-
 23 ters as modernization of human resources systems, im-
 24 proved quality of human resources information, and legis-

1 lation affecting human resources operations and organiza-
2 tions.

3 (c) EMPLOYEE LABOR ORGANIZATIONS AT MEET-
4 INGS.—The Chief Human Capital Officers Council shall
5 ensure that representatives of Federal employee labor or-
6 ganizations are present at a minimum of 1 meeting of the
7 Council each year. Such representatives shall not be mem-
8 bers of the Council.

9 (d) ANNUAL REPORT.—Each year the Chief Human
10 Capital Officers Council shall submit a report to Congress
11 on the activities of the Council.

12 **SEC. 1304. STRATEGIC HUMAN CAPITAL MANAGEMENT.**

13 Section 1103 of title 5, United States Code, is
14 amended by adding at the end the following:

15 “(c)(1) The Office of Personnel Management shall
16 design a set of systems, including appropriate metrics, for
17 assessing the management of human capital by Federal
18 agencies.

19 “(2) The systems referred to under paragraph (1)
20 shall be defined in regulations of the Office of Personnel
21 Management and include standards for—

22 “(A)(i) aligning human capital strategies of
23 agencies with the missions, goals, and organizational
24 objectives of those agencies; and

1 “(ii) integrating those strategies into the budget
2 and strategic plans of those agencies;

3 “(B) closing skill gaps in mission critical occu-
4 pations;

5 “(C) ensuring continuity of effective leadership
6 through implementation of recruitment, develop-
7 ment, and succession plans;

8 “(D) sustaining a culture that cultivates and
9 develops a high performing workforce;

10 “(E) developing and implementing a knowledge
11 management strategy supported by appropriate in-
12 vestment in training and technology; and

13 “(F) holding managers and human resources
14 officers accountable for efficient and effective human
15 resources management in support of agency missions
16 in accordance with merit system principles.”.

17 **SEC. 1305. EFFECTIVE DATE.**

18 This subtitle shall take effect 180 days after the date
19 of enactment of this Act.

1 **Subtitle B—Reforms Relating to**
2 **Federal Human Capital Manage-**
3 **ment**

4 **SEC. 1311. INCLUSION OF AGENCY HUMAN CAPITAL STRA-**
5 **TEGIC PLANNING IN PERFORMANCE PLANS**
6 **AND PROGRAMS PERFORMANCE REPORTS.**

7 (a) PERFORMANCE PLANS.—Section 1115 of title 31,
8 United States Code, is amended—

9 (1) in subsection (a), by striking paragraph (3)
10 and inserting the following:

11 “(3) provide a description of how the perform-
12 ance goals and objectives are to be achieved, includ-
13 ing the operation processes, training, skills and tech-
14 nology, and the human, capital, information, and
15 other resources and strategies required to meet
16 those performance goals and objectives.”;

17 (2) by redesignating subsection (f) as sub-
18 section (g); and

19 (3) by inserting after subsection (e) the fol-
20 lowing:

21 “(f) With respect to each agency with a Chief Human
22 Capital Officer, the Chief Human Capital Officer shall
23 prepare that portion of the annual performance plan de-
24 scribed under subsection (a)(3).”.

1 (b) PROGRAM PERFORMANCE REPORTS.—Section
2 1116(d) of title 31, United States Code, is amended—

3 (1) in paragraph (4), by striking “and” after
4 the semicolon;

5 (2) by redesignating paragraph (5) as para-
6 graph (6); and

7 (3) by inserting after paragraph (4) the fol-
8 lowing:

9 “(5) include a review of the performance goals
10 and evaluation of the performance plan relative to
11 the agency’s strategic human capital management;
12 and”.

13 **SEC. 1312. REFORM OF THE COMPETITIVE SERVICE HIRING**
14 **PROCESS.**

15 (a) IN GENERAL.—Chapter 33 of title 5, United
16 States Code, is amended—

17 (1) in section 3304(a)—

18 (A) in paragraph (1), by striking “and”
19 after the semicolon;

20 (B) in paragraph (2), by striking the pe-
21 riod and inserting “; and”; and

22 (C) by adding at the end of the following:

23 “(3) authority for agencies to appoint, without
24 regard to the provision of sections 3309 through
25 3318, candidates directly to positions for which—

1 “(A) public notice has been given; and

2 “(B) the Office of Personnel Management
3 has determined that there exists a severe short-
4 age of candidates or there is a critical hiring
5 need.

6 The Office shall prescribe, by regulation, criteria for iden-
7 tifying such positions and may delegate authority to make
8 determinations under such criteria.”; and

9 (2) by inserting after section 3318 the fol-
10 lowing:

11 **“§ 3319. Alternative ranking and selection procedures**

12 “(a) The Office, in exercising its authority under sec-
13 tion 3304, or an agency to which the Office has delegated
14 examining authority under section 1104(a)(2), may estab-
15 lish category rating systems for evaluating applicants for
16 positions in the competitive service, under 2 or more qual-
17 ity categories based on merit consistent with regulations
18 prescribed by the Office of Personnel Management, rather
19 than assigned individual numerical ratings.

20 “(b) Within each quality category established under
21 subsection (a), preference-eligibles shall be listed ahead of
22 individuals who are not preference eligibles. For other
23 than scientific and professional positions at GS-9 of the
24 General Schedule (equivalent or higher), qualified pref-
25 erence-eligibles who have a compensable service-connected

1 disability of 10 percent or more shall be listed in the high-
2 est quality category.

3 “(c)(1) An appointing official may select any appli-
4 cant in the highest quality category or, if fewer than 3
5 candidates have been assigned to the highest quality cat-
6 egory, in a merged category consisting of the highest and
7 the second highest quality categories.

8 “(2) Notwithstanding paragraph (1), the appointing
9 official may not pass over a preference-eligible in the same
10 category from which selection is made, unless the require-
11 ments of section 3317(b) or 3318(b), as applicable, are
12 satisfied.

13 “(d) Each agency that establishes a category rating
14 system under this section shall submit in each of the 3
15 years following that establishment, a report to Congress
16 on that system including information on—

17 “(1) the number of employees hired under that
18 system;

19 “(2) the impact that system has had on the hir-
20 ing of veterans and minorities, including those who
21 are American Indian or Alaska Natives, Asian,
22 Black or African American, and native Hawaiian or
23 other Pacific Islanders; and

24 “(3) the way in which managers were trained in
25 the administration of that system.

1 “(e) The Office of Personnel Management may pre-
 2 scribe such regulations as it considers necessary to carry
 3 out the provisions of this section.”.

4 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
 5 The table of sections for chapter 33 of title 5, United
 6 States Code, is amended by striking the item relating to
 7 section 3319 and inserting the following:

“3319. Alternative ranking and selection procedures.”.

8 **SEC. 1313. PERMANENT EXTENSION, REVISION, AND EXPAN-**
 9 **SION OF AUTHORITIES FOR USE OF VOL-**
 10 **UNTARY SEPARATION INCENTIVE PAY AND**
 11 **VOLUNTARY EARLY RETIREMENT.**

12 (a) **VOLUNTARY SEPARATION INCENTIVE PAY-**
 13 **MENTS.**—

14 (1) **IN GENERAL.**—

15 (A) **AMENDMENT TO TITLE 5, UNITED**
 16 **STATES CODE.**—Chapter 35 of title 5, United
 17 States Code, is amended by inserting after sub-
 18 chapter I the following:

19 **“SUBCHAPTER II—VOLUNTARY SEPARATION**
 20 **INCENTIVE PAYMENTS**

21 **“§ 3521. Definitions**

22 “In this subchapter, the term—

23 “(1) ‘agency’ means an Executive agency as de-
 24 fined under section 105; and

25 “(2) ‘employee’—

1 “(A) means an employee as defined under
2 section 2105 employed by an agency and an in-
3 dividual employed by a county committee estab-
4 lished under section 8(b)(5) of the Soil Con-
5 servation and Domestic Allotment Act (16
6 U.S.C. 590h(b)(5)) who—

7 “(i) is serving under an appointment
8 without time limitation; and

9 “(ii) has been currently employed for
10 a continuous period of at least 3 years;
11 and

12 “(B) shall not include—

13 “(i) a reemployed annuitant under
14 subchapter III of chapter 83 or 84 or an-
15 other retirement system for employees of
16 the Government;

17 “(ii) an employee having a disability
18 on the basis of which such employee is or
19 would be eligible for disability retirement
20 under subchapter III of chapter 83 or 84
21 or another retirement system for employees
22 of the Government.

23 “(iii) an employee who is in receipt of
24 a decision notice of involuntary separation

1 for misconduct or unacceptable perform-
2 ance;

3 “(iv) an employee who has previously
4 received any voluntary separation incentive
5 payment from the Federal Government
6 under this subchapter or any other author-
7 ity;

8 “(v) an employee covered by statutory
9 reemployment rights who is on transfer
10 employment with another organization; or

11 “(vi) any employee who—

12 “(I) during the 36-month period
13 preceding the date of separation of
14 that employee, performed service for
15 which a student loan repayment ben-
16 efit was or is to be paid under section
17 5379;

18 “(II) during the 24-month period
19 preceding the date of separation of
20 that employee, performed service for
21 which a recruitment or relocation
22 bonus was or is to be paid under sec-
23 tion 5753; or

24 “(III) during the 12-month pe-
25 riod preceding the date of separation

1 of that employee, performed service
2 for which a retention bonus was or is
3 to be paid under section 5754.

4 **“§ 3522. Agency plans; approval**

5 “(a) Before obligating any resources for voluntary
6 separation incentive payments, the head of each agency
7 shall submit to the Office of Personnel Management a
8 plan outlining the intended use of such incentive payments
9 and a proposed organizational chart for the agency once
10 such incentive payments have been completed.

11 “(b) The plan of an agency under subsection (a) shall
12 include—

13 “(1) the specific positions and functions to be
14 reduced or eliminated;

15 “(2) a description of which categories of em-
16 ployees will be offered incentives;

17 “(3) the time period during which incentives
18 may be paid;

19 “(4) the number and amounts of voluntary sep-
20 aration incentive payments to be offered; and

21 “(5) a description of how the agency will oper-
22 ate without the eliminated positions and functions.

23 “(c) The Director of the Office of Personnel Manage-
24 ment shall review each agency’s plan and may make any
25 appropriate modifications in the plan, in consultation with

1 the Director of the Office of Management and Budget. A
2 plan under this section may not be implemented without
3 the approval of the Directive of the Office of Personnel
4 Management.

5 **“§ 3523. Authority to provide voluntary separation in-**
6 **centive payments**

7 “(a) A voluntary separation incentive payment under
8 this subchapter may be paid to an employee only as pro-
9 vided in the plan of an agency established under section
10 3522.

11 “(b) A voluntary incentive payment—

12 “(1) shall be offered to agency employees on the
13 basis of—

14 “(A) 1 or more organizational units;

15 “(B) 1 or more occupational series or lev-
16 els;

17 “(C) 1 or more geographical locations;

18 “(D) skills, knowledge, or other factors re-
19 lated to a position;

20 “(E) specific periods of time during which
21 eligible employees may elect a voluntary incen-
22 tive payment; or

23 “(F) any appropriate combination of such
24 factors;

1 “(2) shall be paid in a lump sum after the em-
2 ployee’s separation;

3 “(3) shall be equal to the lesser of—

4 “(A) an amount equal to the amount the
5 employee would be entitled to receive under sec-
6 tion 5595(c) if the employee were entitled to
7 payment under such section (without adjust-
8 ment for any previous payment made); or

9 “(B) an amount determined by the agency
10 head, not to exceed \$25,000;

11 “(4) may be made only in the case of an em-
12 ployee who voluntarily separates (whether by retire-
13 ment or resignation) under this subchapter;

14 “(5) shall not be a basis for payment, and shall
15 not be included in the computation, of any other
16 type of Government benefit;

17 “(6) shall not be taken into account in deter-
18 mining the amount of any severance pay to which
19 the employee may be entitled under section 5595,
20 based on another other separation; and

21 “(7) shall be paid from appropriations or funds
22 available for the payment of the basic pay of the em-
23 ployee.

1 **“§ 3524. Effect of subsequent employment with the**
2 **Government**

3 “(a) The term ‘employment’—

4 “(1) in subsection (b) includes employment
5 under a personal services contract (or other direct
6 contract) with the United States Government (other
7 than an entity in the legislative branch); and

8 “(2) in subsection (c) does not include employ-
9 ment under such a contract.

10 “(b) An individual who has received a voluntary sepa-
11 ration incentive payment under this subchapter and ac-
12 cepts any employment for compensation with the Govern-
13 ment of the United States with 5 years after the date of
14 the separation on which the payment is based shall be re-
15 quired to pay, before the individual’s first day of employ-
16 ment, the entire amount of the incentive payment to the
17 agency that paid the incentive payment.

18 “(c)(1) If the employment under this section is with
19 an agency, other than the General Accounting Office, the
20 United States Postal Service, or the Postal Rate Commis-
21 sion, the Director of the Office of Personnel Management
22 may, at the request of the head of the agency, may waive
23 the repayment if—

24 “(A) the individual involved possesses unique
25 abilities and is the only qualified applicant available
26 for the position; or

1 “(B) in case of an emergency involving a direct
2 threat to life or property, the individual—

3 “(i) has skills directly related to resolving
4 the emergency; and

5 “(ii) will serve on a temporary basis only
6 so long as that individual’s services are made
7 necessary by the emergency.

8 “(2) If the employment under this section is with an
9 entity in the legislative branch, the head of the entity or
10 the appointing official may waive the repayment if the in-
11 dividual involved possesses unique abilities and is the only
12 qualified applicant available for the position.

13 “(3) If the employment under this section is with the
14 judicial branch, the Director of the Administrative Office
15 of the United States Courts may waive the repayment if
16 the individual involved possesses unique abilities and is the
17 only qualified applicant available for the position.

18 **“§ 3525. Regulations**

19 “The Office of Personnel Management may prescribe
20 regulations to carry out this subchapter.”.

21 (B) TECHNICAL AND CONFORMING AMEND-
22 MENTS.—Chapter 35 of title 5, United States
23 Code, is amended—

24 (i) by striking the chapter heading
25 and inserting the following:

1 **“CHAPTER 35—RETENTION PREFERENCE,**
2 **VOLUNTARY SEPARATION INCENTIVE**
3 **PAYMENTS, RESTORATION, AND RE-**
4 **EMPLOYMENT”;**

5 and

6 (ii) in the table of sections by insert-
7 ing after the item relating to section 3504
8 the following:

“SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

“3521. Definitions.

“3522. Agency plans; approval.

“3523. Authority to provide voluntary separation incentive pay-
ments.

“3524. Effect of subsequent employment with the Government.

“3525. Regulations.”.

9 (2) ADMINISTRATIVE OFFICE OF THE UNITED
10 STATES COURTS.—The Director of the Administra-
11 tive Office of the United States Courts may, by reg-
12 ulation, establish a program substantially similar to
13 the program established under paragraph (1) for in-
14 dividuals serving in the judicial branch.

15 (3) CONTINUATION OF OTHER AUTHORITY.—
16 Any agency exercising any voluntary separation in-
17 centive authority in effect on the effective date of
18 this subsection may continue to offer voluntary sepa-
19 ration incentives consistent with that authority until
20 that authority expires.

1 (4) EFFECTIVE DATE.—This subsection shall
2 take effect 60 days after the date of enactment of
3 this Act.

4 (b) FEDERAL EMPLOYEE VOLUNTARY EARLY RE-
5 TIREMENT.—

6 (1) CIVIL SERVICE RETIREMENT SYSTEM.—Sec-
7 tion 8336(d)(2) of title 5, United States Code, is
8 amended to read as follows:

9 “(2)(A) has been employed continuously, by the
10 agency in which the employee is serving, for at least
11 the 31-day period ending on the date on which such
12 agency requests the determination referred to in
13 subparagraph (D);

14 “(B) is serving under an appointment that is
15 not time limited;

16 “(C) has not been duly notified that such em-
17 ployee is to be involuntarily separated for mis-
18 conduct or unacceptable performance;

19 “(D) is separated from the service voluntarily
20 during a period in which, as determined by the office
21 of Personnel Management (upon request of the
22 agency) under regulations prescribed by the Office—

23 “(i) such agency (or, if applicable, the
24 component in which the employee is serving) is
25 undergoing substantial delayering, substantial

1 reorganization, substantial reductions in force,
2 substantial transfer of function, or other sub-
3 stantial workforce restructuring (or shaping);

4 “(ii) a significant percentage of employees
5 servicing in such agency (or component) are
6 likely to be separated or subject to an imme-
7 diate reduction in the rate of basic pay (without
8 regard to subchapter VI of chapter 53, or com-
9 parable provisions); or

10 “(iii) identified as being in positions which
11 are becoming surplus or excess to the agency’s
12 future ability to carry out its mission effec-
13 tively; and

14 “(E) as determined by the agency under regula-
15 tions prescribed by the Office, is within the scope of
16 the offer of voluntary early retirement, which may be
17 made on the basis of—

18 “(i) 1 or more organizational units;

19 “(ii) 1 or more occupational series or lev-
20 els;

21 “(iii) 1 or more geographical locations;

22 “(iv) specific periods;

23 “(v) skills, knowledge, or other factors re-
24 lated to a position; or

1 “(vi) any appropriate combination of such
2 factors;”.

3 (2) FEDERAL EMPLOYEES’ RETIREMENT SYS-
4 TEM.—Section 8414(b)(1) of title 5, United States
5 Code, is amended by striking subparagraph (B) and
6 inserting the following:

7 “(B)(i) has been employed continuously, by
8 the agency in which the employee is serving, for
9 at least the 31-day period ending on the date
10 on which such agency requests the determina-
11 tion referred to in clause (iv);

12 “(ii) is serving under an appointment that
13 is not time limited;

14 “(iii) has not been duly notified that such
15 employee is to be involuntarily separated for
16 misconduct or unacceptable performance;

17 “(iv) is separate from the service volun-
18 tarily during a period in which, as determined
19 by the Office of Personnel Management (upon
20 request of the agency) under regulations pre-
21 scribed by the Office—

22 “(I) such agency (or, if applicable, the
23 component in which the employee is serv-
24 ing) is undergoing substantial delayering,
25 substantial reorganization, substantial re-

1 ductions in force, substantial transfer of
2 function, or other substantial workforce re-
3 structuring (or shaping);

4 “(II) a significant percentage of em-
5 ployees serving in such agency (or compo-
6 nent) are likely to be separated or subject
7 to an immediate reduction in the rate of
8 basic pay (without regard to subchapter VI
9 of chapter 53, or comparable provisions);
10 or

11 “(III) identified as being in positions
12 which are becoming surplus or excess to
13 the agency’s future ability to carry out its
14 mission effectively; and

15 “(v) as determined by the agency under
16 regulations prescribed by the Office, is within
17 the scope of the offer of voluntary early retire-
18 ment, which may be made on the basis of—

19 “(I) 1 or more organizational units;

20 “(II) 1 or more occupational series or
21 levels;

22 “(III) 1 or more geographical loca-
23 tions;

24 “(IV) specific periods;

1 “(V) skills, knowledge, or other fac-
2 tors related to a position; or

3 “(VI) any appropriate combination of
4 such factors.”.

5 (3) GENERAL ACCOUNTING OFFICE AUTHOR-
6 ITY.—The amendments made by this subsection
7 shall not be construed to affect the authority under
8 section 1 of Public Law 106–303 (5 U.S.C. 8336
9 note; 114 Stat. 1063).

10 (4) TECHNICAL AND CONFORMING AMEND-
11 MENTS.—Section 7001 of the 1998 Supplemental
12 Appropriations and Rescissions Act (Public Law
13 105–174; 112 Stat. 91) is repealed.

14 (5) REGULATIONS.—The Office of Personnel
15 Management may prescribe regulations to carry out
16 this subsection.

17 (c) SENSE OF CONGRESS.—It is the sense of Con-
18 gress that the implementation of this section is intended
19 to reshape the Federal workforce and not downsize the
20 Federal workforce.

21 **SEC. 1314. STUDENT VOLUNTEER TRANSIT SUBSIDY.**

22 (a) IN GENERAL.—Section 7905(a)(1) of title 5,
23 United States Code, is amended by striking “and a mem-
24 ber of a uniformed service” and inserting “, a member

1 of a uniformed service, and a student who provides vol-
2 untary services under section 3111”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—
4 Section 3111(c)(1) of title 5, United States Code, is
5 amended by striking “chapter 81 of this title” and insert-
6 ing “section 7905 (relating to commuting by means other
7 than single-occupancy motor vehicles), chapter 81”.

8 **Subtitle C—Reforms Relating to** 9 **the Senior Executive Service**

10 **SEC. 1321. REPEAL OF RECERTIFICATION REQUIREMENTS** 11 **OF SENIOR EXECUTIVES.**

12 (a) IN GENERAL.—Title 5, United States Code, is
13 amended—

14 (1) in chapter 33—

15 (A) in section 3393(g) by striking
16 “3393a”;

17 (B) by repealing section 3393a; and

18 (C) in the table of sections by striking the
19 item relating to section 3393a;

20 (2) in chapter 35—

21 (A) in section 3592(a)—

22 (i) in paragraph (1), by inserting “or”
23 at the end;

24 (ii) in paragraph (2), by striking “or”
25 at the end;

1 (iii) by striking paragraph (3); and

2 (iv) by striking the last sentence;

3 (B) in section 3593(a), by striking para-
4 graph (2) and inserting the following:

5 “(2) the appointee left the Senior Executive
6 Service for reasons other than misconduct, neglect of
7 duty, malfeasance, or less than fully successful execu-
8 tive performance as determined under subchapter
9 II of chapter 43.”; and

10 (C) in section 3594(b)—

11 (i) in paragraph (1), by inserting “or”
12 at the end;

13 (ii) in paragraph (2), by striking “or”
14 at the end; and

15 (iii) by striking paragraph (3);

16 (3) in section 7701(c)(1)(A), by striking “or re-
17 moval from the Senior Executive Service for failure
18 to be recertified under section 3393a”;

19 (4) in chapter 83—

20 (A) in section 8336(h)(1), by striking “for
21 failure to be recertified as a senior executive
22 under section 3393a or”; and

23 (B) in section 8339(h), in the first sen-
24 tence, by striking “, except that such reduction
25 shall not apply in the case of an employee retir-

1 ing under section 8336(h) for failure to be re-
2 certified as a senior executive”; and

3 (5) in chapter 84—

4 (A) in section 8414(a)(1), by striking “for
5 failure to be recertified as a senior executive
6 under section 3393a or”; and

7 (B) in section 8421(a)(2), by striking “,
8 except that an individual entitled to an annuity
9 under section 8414(a) for failure to be recer-
10 tified as a senior executive shall be entitled to
11 an annuity supplement without regard to such
12 applicable retirement age”.

13 (b) SAVINGS PROVISION.—Notwithstanding the
14 amendments made by subsection (a)(2)(A), an appeal
15 under the final sentence of section 3592(a) of title 5,
16 United States Code, that is pending on the day before the
17 effective date of this section—

18 (1) shall not abate by reason of the enactment
19 of the amendments made by subsection (a)(2)(A);
20 and

21 (2) shall continue as if such amendments had
22 not been enacted.

23 (c) APPLICATION.—The amendment made by sub-
24 section (a)(2)(B) shall not apply with respect to an indi-
25 vidual who, before the effective date of this section, leaves

1 the Senior Executive Service for failure to be recertified
2 as a senior executive under section 3393a of title 5, United
3 States Code.

4 **SEC. 1322. ADJUSTMENT OF LIMITATION ON TOTAL AN-**
5 **NUAL COMPENSATION.**

6 (a) IN GENERAL.—Section 5307 of title 5, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 “(d)(1) Notwithstanding any other provision of this
10 section, subsection (a)(1) shall be applied by substituting
11 ‘the total annual compensation payable to the Vice Presi-
12 dent under section 104 of title 3’ for ‘the annual rate of
13 basic pay payable for level I of the Executive Schedule’
14 in the case of any employee who—

15 “(A) is paid under section 5376 or 5383 of this
16 title or section 332(f), 603, or 604 of title 28; and

17 “(B) holds a position in or under an agency
18 which is described in paragraph (2).

19 “(2) An agency described in this paragraph is any
20 agency which, for purposes of the calendar year involved,
21 has been certified under this subsection as having a per-
22 formance appraisal system which (as designed and ap-
23 plied) makes meaningful distinctions based on relative per-
24 formance.

1 “(3)(A) The Office of Personnel Management and the
2 Office of Management and Budget jointly shall promul-
3 gate such regulations as may be necessary to carry out
4 this subsection, including the criteria and procedures in
5 accordance with which any determinations under this sub-
6 section shall be made.

7 “(B) An agency’s certification under this subsection
8 shall be for a period of 2 calendar years, except that such
9 certification may be terminated at any time, for purposes
10 of either or both of those years, upon a finding that the
11 actions of such agency have not remained in conformance
12 with applicable requirements.

13 “(C) Any certification or decertification under this
14 subsection shall be made by the Office of Personnel Man-
15 agement, with the concurrence of the Office of Manage-
16 ment and Budget.

17 “(4) Notwithstanding any provision of paragraph (3),
18 any regulations, certifications, or other measures nec-
19 essary to carry out this subsection with respect to employ-
20 ees within the judicial branch shall be the responsibility
21 of the Director of the Administrative Office of the United
22 States Courts. However, the regulations under this para-
23 graph shall be consistent with those promulgated under
24 paragraph (3).”.

1 (b) CONFORMING AMENDMENTS.—(1) Section
2 5307(a) of title 5, United States Code, is amended by in-
3 serting “or as otherwise provided under subsection (d),”
4 after “under law,”.

5 (2) Section 5307(c) of such title is amended by strik-
6 ing “this section,” and inserting “this section (subject to
7 subsection (d)),”.

8 **Subtitle D—Academic Training**

9 **SEC. 1331. ACADEMIC TRAINING.**

10 (a) ACADEMIC DEGREE TRAINING.—Section 4107 of
11 title 5, United States Code, is amended to read as follows:

12 **“§ 4107. Academic degree training**

13 “(a) Subject to subsection (b), an agency may select
14 and assign an employee to academic degree training and
15 may pay or reimburse the costs of academic degree train-
16 ing from appropriated or other available funds if such
17 training—

18 “(1) contributes significantly to—

19 “(A) meeting an identified agency training
20 need;

21 “(B) resolving an identified agency staffing
22 problem; or

23 “(C) accomplishing goals in the strategic
24 plan of the agency;

1 “(2) is part of a planned, systemic, and coordi-
2 nated agency employee development program linked
3 to accomplishing the strategic goals of the agency;
4 and

5 “(3) is accredited and is provided by a college
6 or university that is accredited by a nationally recog-
7 nized body.

8 “(b) In exercising authority under subsection (a), an
9 agency shall—

10 “(1) consistent with the merit system principles
11 set forth in paragraphs (2) and (7) of section
12 2301(b), take into consideration the need to—

13 “(A) maintain a balanced workforce in
14 which women, members of racial and ethnic mi-
15 nority groups, and persons with disabilities are
16 appropriately represented in Government serv-
17 ice; and

18 “(B) provide employees effective education
19 and training to improve organizational and indi-
20 vidual performance;

21 “(2) assure that the training is not for the sole
22 purpose of providing an employee an opportunity to
23 obtain an academic degree or qualify for appoint-
24 ment to a particular position for which the academic
25 degree is a basic requirement;

1 “(3) assure that no authority under this sub-
2 section is exercised on behalf of any employee occu-
3 pying or seeking to qualify for—

4 “(A) a noncareer appointment in the sen-
5 ior Executive Service; or

6 “(B) appointment to any position that is
7 excepted from the competitive service because of
8 its confidential policy-determining, policy-mak-
9 ing or policy-advocating character; and

10 “(4) to the greatest extent practicable, facilitate
11 the use of online degree training.”.

12 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—

13 The table of sections for chapter 41 of title 5, United
14 States Code, is amended by striking the item relating to
15 section 4107 and inserting the following:

 “4107. Academic degree training.”.

16 **SEC. 1332. MODIFICATIONS TO NATIONAL SECURITY EDU-**
17 **CATION PROGRAM.**

18 (a) **FINDINGS AND POLICIES.**—

19 (1) **FINDINGS.**—Congress finds that—

20 (A) the United States Government actively
21 encourages and financially supports the train-
22 ing, education, and development of many
23 United States citizens;

24 (B) as a condition of some of those sup-
25 ports, many of those citizens have an obligation

1 to seek either compensated or uncompensated
2 employment in the Federal sector; and

3 (C) it is in the United States national in-
4 terest to maximize the return to the Nation of
5 funds invested in the development of such citi-
6 zens by seeking to employ them in the Federal
7 sector.

8 (2) POLICY.—It shall be the policy of the
9 United States Government to—

10 (A) establish procedures for ensuring that
11 United States citizens who have incurred serv-
12 ice obligations as the result of receiving finan-
13 cial support for education and training from the
14 United States Government and have applied for
15 Federal positions are considered in all recruit-
16 ment and hiring initiatives of Federal depart-
17 ments, bureaus, agencies, and offices; and

18 (B) advertise and open all Federal posi-
19 tions to United States citizens who have in-
20 curred service obligations with the United
21 States Government as the result of receiving fi-
22 nancial support for education and training from
23 the United States Government.

24 (b) FULFILLMENT OF SERVICE REQUIREMENT IF
25 NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.—

1 Section 802(b)(2) of the David L. Boren National Security
2 rity Education Act of 1991 (50 U.S.C. 1902) is
3 amended—

4 (1) in subparagraph (A), by striking clause (ii)
5 and inserting the following:

6 “(ii) if the recipient demonstrates to
7 the Secretary (in accordance with such
8 regulations) that no national security posi-
9 tion in an agency or office of the Federal
10 Government having national security re-
11 sponsibilities is available, work in other of-
12 fices or agencies of the Federal Govern-
13 ment or in the field of higher education in
14 a discipline relating to the foreign country,
15 foreign language, area study, or inter-
16 national field of study for which the schol-
17 arship was awarded, for a period specified
18 by the Secretary, which period shall be de-
19 termined in accordance with clause (i); or”;
20 and

21 (2) in subparagraph (B), by striking clause (ii)
22 and inserting the following:

23 “(ii) if the recipient demonstrates to
24 the Secretary (in accordance with such
25 regulations) that no national security posi-

1 tion is available upon the completion of the
2 degree, work in other offices or agencies of
3 the Federal Government or in the field of
4 higher education in a discipline relating to
5 foreign country, foreign language, area
6 study, or international field of study for
7 which the fellowship was awarded, for a
8 period specified by the Secretary, which pe-
9 riod shall be determined in accordance
10 with clause (i); and”.

11 **TITLE XIV—ARMING PILOTS**
12 **AGAINST TERRORISM**

13 **SEC. 1401. SHORT TITLE.**

14 This title may be cited as the “Arming Pilots Against
15 Terrorism Act”.

16 **SEC. 1402. FEDERAL FLIGHT DECK OFFICER PROGRAM.**

17 (a) IN GENERAL.—Subchapter I of chapter 449 of
18 title 49, United States Code, is amended by adding at the
19 end the following:

20 **“§ 44921. Federal flight deck officer program**

21 “(a) ESTABLISHMENT.—The Under Secretary of
22 Transportation for Security shall establish a program to
23 deputize volunteer pilots of air carriers providing pas-
24 senger air transportation or intrastate passenger air
25 transportation as Federal law enforcement officers to de-

1 fend the flight decks of aircraft of such air carriers against
2 acts of criminal violence or air piracy. Such officers shall
3 be known as ‘Federal flight deck officers’.

4 “(b) PROCEDURAL REQUIREMENTS.—

5 “(1) IN GENERAL.—Not later than 3 months
6 after the date of enactment of this section, the
7 Under Secretary shall establish procedural require-
8 ments to carry out the program under this section.

9 “(2) COMMENCEMENT OF PROGRAM.—Begin-
10 ning 3 months after the date of enactment of this
11 section, the Under Secretary shall begin the process
12 of training and deputizing pilots who are qualified to
13 be Federal flight deck officers as Federal flight deck
14 officers under the program.

15 “(3) ISSUES TO BE ADDRESSED.—The proce-
16 dural requirements established under paragraph (1)
17 shall address the following issues:

18 “(A) The type of firearm to be used by a
19 Federal flight deck officer.

20 “(B) The type of ammunition to be used
21 by a Federal flight deck officer.

22 “(C) The standards and training needed to
23 qualify and requalify as a Federal flight deck
24 officer.

1 “(D) The placement of the firearm of a
2 Federal flight deck officer on board the aircraft
3 to ensure both its security and its ease of re-
4 trieval in an emergency.

5 “(E) An analysis of the risk of cata-
6 strophic failure of an aircraft as a result of the
7 discharge (including an accidental discharge) of
8 a firearm to be used in the program into the
9 avionics, electrical systems, or other sensitive
10 areas of the aircraft.

11 “(F) The division of responsibility between
12 pilots in the event of an act of criminal violence
13 or air piracy if only 1 pilot is a Federal flight
14 deck officer and if both pilots are Federal flight
15 deck officers.

16 “(G) Procedures for ensuring that the fire-
17 arm of a Federal flight deck officer does not
18 leave the cockpit if there is a disturbance in the
19 passenger cabin of the aircraft or if the pilot
20 leaves the cockpit for personal reasons.

21 “(H) Interaction between a Federal flight
22 deck officer and a Federal air marshal on board
23 the aircraft.

24 “(I) The process for selection of pilots to
25 participate in the program based on their fit-

1 ness to participate in the program, including
2 whether an additional background check should
3 be required beyond that required by section
4 44936(a)(1).

5 “(J) Storage and transportation of fire-
6 arms between flights, including international
7 flights, to ensure the security of the firearms,
8 focusing particularly on whether such security
9 would be enhanced by requiring storage of the
10 firearm at the airport when the pilot leaves the
11 airport to remain overnight away from the pi-
12 lot’s base airport.

13 “(K) Methods for ensuring that security
14 personnel will be able to identify whether a pilot
15 is authorized to carry a firearm under the pro-
16 gram.

17 “(L) Methods for ensuring that pilots (in-
18 cluding Federal flight deck officers) will be able
19 to identify whether a passenger is a law en-
20 forcement officer who is authorized to carry a
21 firearm aboard the aircraft.

22 “(M) Any other issues that the Under Sec-
23 retary considers necessary.

24 “(N) The Under Secretary’s decisions re-
25 garding the methods for implementing each of

1 the foregoing procedural requirements shall be
2 subject to review only for abuse of discretion.

3 “(4) PREFERENCE.—In selecting pilots to par-
4 ticipate in the program, the Under Secretary shall
5 give preference to pilots who are former military or
6 law enforcement personnel.

7 “(5) CLASSIFIED INFORMATION.—Notwith-
8 standing section 552 of title 5 but subject to section
9 40119 of this title, information developed under
10 paragraph (3)(E) shall not be disclosed.

11 “(6) NOTICE TO CONGRESS.—The Under Sec-
12 retary shall provide notice to the Committee on
13 Transportation and Infrastructure of the House of
14 Representatives and the Committee on Commerce,
15 Science, and Transportation of the Senate after
16 completing the analysis required by paragraph
17 (3)(E).

18 “(7) MINIMIZATION OF RISK.—If the Under
19 Secretary determines as a result of the analysis
20 under paragraph (3)(E) that there is a significant
21 risk of the catastrophic failure of an aircraft as a re-
22 sult of the discharge of a firearm, the Under Sec-
23 retary shall take such actions as may be necessary
24 to minimize that risk.

25 “(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

1 “(1) IN GENERAL.—The Under Secretary shall
2 only be obligated to provide the training, super-
3 vision, and equipment necessary for a pilot to be a
4 Federal flight deck officer under this section at no
5 expense to the pilot or the air carrier employing the
6 pilot.

7 “(2) TRAINING.—

8 “(A) IN GENERAL.—The Under Secretary
9 shall base the requirements for the training of
10 Federal flight deck officers under subsection (b)
11 on the training standards applicable to Federal
12 air marshals; except that the Under Secretary
13 shall take into account the differing roles and
14 responsibilities of Federal flight deck officers
15 and Federal air marshals.

16 “(B) ELEMENTS.—The training of a Fed-
17 eral flight deck officer shall include, at a min-
18 imum, the following elements:

19 “(i) Training to ensure that the offi-
20 cer achieves the level of proficiency with a
21 firearm required under subparagraph
22 (C)(i).

23 “(ii) Training to ensure that the offi-
24 cer maintains exclusive control over the of-

1 ficer’s firearm at all times, including train-
2 ing in defensive maneuvers.

3 “(iii) Training to assist the officer in
4 determining when it is appropriate to use
5 the officer’s firearm and when it is appro-
6 priate to use less than lethal force.

7 “(C) TRAINING IN USE OF FIREARMS.—

8 “(i) STANDARD.—In order to be depu-
9 tized as a Federal flight deck officer, a
10 pilot must achieve a level of proficiency
11 with a firearm that is required by the
12 Under Secretary. Such level shall be com-
13 parable to the level of proficiency required
14 of Federal air marshals.

15 “(ii) CONDUCT OF TRAINING.—The
16 training of a Federal flight deck officer in
17 the use of a firearm may be conducted by
18 the Under Secretary or by a firearms
19 training facility approved by the Under
20 Secretary.

21 “(iii) REQUALIFICATION.—The Under
22 Secretary shall require a Federal flight
23 deck officer to requalify to carry a firearm
24 under the program. Such requalification

1 shall occur at an interval required by the
2 Under Secretary.

3 “(d) DEPUTIZATION.—

4 “(1) IN GENERAL.—The Under Secretary may
5 deputize, as a Federal flight deck officer under this
6 section, a pilot who submits to the Under Secretary
7 a request to be such an officer and whom the Under
8 Secretary determines is qualified to be such an offi-
9 cer.

10 “(2) QUALIFICATION.—A pilot is qualified to be
11 a Federal flight deck officer under this section if—

12 “(A) the pilot is employed by an air car-
13 rier;

14 “(B) the Under Secretary determines (in
15 the Under Secretary’s discretion) that the pilot
16 meets the standards established by the Under
17 Secretary for being such an officer; and

18 “(C) the Under Secretary determines that
19 the pilot has completed the training required by
20 the Under Secretary.

21 “(3) DEPUTIZATION BY OTHER FEDERAL AGEN-
22 CIES.—The Under Secretary may request another
23 Federal agency to deputize, as Federal flight deck
24 officers under this section, those pilots that the

1 Under Secretary determines are qualified to be such
2 officers.

3 “(4) REVOCATION.—The Under Secretary may,
4 (in the Under Secretary’s discretion) revoke the dep-
5 utization of a pilot as a Federal flight deck officer
6 if the Under Secretary finds that the pilot is no
7 longer qualified to be such an officer.

8 “(e) COMPENSATION.—Pilots participating in the
9 program under this section shall not be eligible for com-
10 pensation from the Federal Government for services pro-
11 vided as a Federal flight deck officer. The Federal Govern-
12 ment and air carriers shall not be obligated to compensate
13 a pilot for participating in the program or for the pilot’s
14 training or qualification and requalification to carry fire-
15 arms under the program.

16 “(f) AUTHORITY TO CARRY FIREARMS.—

17 “(1) IN GENERAL.—The Under Secretary shall
18 authorize a Federal flight deck officer to carry a
19 firearm while engaged in providing air transpor-
20 tation or intrastate air transportation. Notwith-
21 standing subsection (c)(1), the officer may purchase
22 a firearm and carry that firearm aboard an aircraft
23 of which the officer is the pilot in accordance with
24 this section if the firearm is of a type that may be
25 used under the program.

1 “(2) PREEMPTION.—Notwithstanding any other
2 provision of Federal or State law, a Federal flight
3 deck officer, whenever necessary to participate in the
4 program, may carry a firearm in any State and from
5 1 State to another State.

6 “(3) CARRYING FIREARMS OUTSIDE UNITED
7 STATES.—In consultation with the Secretary of
8 State, the Under Secretary may take such action as
9 may be necessary to ensure that a Federal flight
10 deck officer may carry a firearm in a foreign country
11 whenever necessary to participate in the program.

12 “(g) AUTHORITY TO USE FORCE.—Notwithstanding
13 section 44903(d), the Under Secretary shall prescribe the
14 standards and circumstances under which a Federal flight
15 deck officer may use, while the program under this section
16 is in effect, force (including lethal force) against an indi-
17 vidual in the defense of the flight deck of an aircraft in
18 air transportation or intrastate air transportation.

19 “(h) LIMITATION ON LIABILITY.—

20 “(1) LIABILITY OF AIR CARRIERS.—An air car-
21 rier shall not be liable for damages in any action
22 brought in a Federal or State court arising out of
23 a Federal flight deck officer’s use of or failure to use
24 a firearm.

1 “(2) LIABILITY OF FEDERAL FLIGHT DECK OF-
2 FICERS.—A Federal flight deck officer shall not be
3 liable for damages in any action brought in a Fed-
4 eral or State court arising out of the acts or omis-
5 sions of the officer in defending the flight deck of an
6 aircraft against acts of criminal violence or air pi-
7 racy unless the officer is guilty of gross negligence
8 or willful misconduct.

9 “(3) LIABILITY OF FEDERAL GOVERNMENT.—
10 For purposes of an action against the United States
11 with respect to an act or omission of a Federal flight
12 deck officer in defending the flight deck of an air-
13 craft, the officer shall be treated as an employee of
14 the Federal Government under chapter 171 of title
15 28, relating to tort claims procedure.

16 “(i) PROCEDURES FOLLOWING ACCIDENTAL DIS-
17 CHARGES.—If an accidental discharge of a firearm under
18 the pilot program results in the injury or death of a pas-
19 senger or crew member on an aircraft, the Under
20 Secretary—

21 “(1) shall revoke the deputization of the Fed-
22 eral flight deck officer responsible for that firearm
23 if the Under Secretary determines that the discharge
24 was attributable to the negligence of the officer; and

1 “(2) if the Under Secretary determines that a
2 shortcoming in standards, training, or procedures
3 was responsible for the accidental discharge, the
4 Under Secretary may temporarily suspend the pro-
5 gram until the shortcoming is corrected.

6 “(j) LIMITATION ON AUTHORITY OF AIR CAR-
7 RIERS.—No air carrier shall prohibit or threaten any re-
8 taliatory action against a pilot employed by the air carrier
9 from becoming a Federal flight deck officer under this sec-
10 tion. No air carrier shall—

11 “(1) prohibit a Federal flight deck officer from
12 piloting an aircraft operated by the air carrier, or

13 “(2) terminate the employment of a Federal
14 flight deck officer, solely on the basis of his or her
15 volunteering for or participating in the program
16 under this section.

17 “(k) APPLICABILITY.—

18 “(1) EXEMPTION.—This section shall not apply
19 to air carriers operating under part 135 of title 14,
20 Code of Federal Regulations, and to pilots employed
21 by such carriers to the extent that such carriers and
22 pilots are covered by section 135.119 of such title or
23 any successor to such section.

24 “(2) PILOT DEFINED.—The term ‘pilot’ means
25 an individual who has final authority and responsi-

1 bility for the operation and safety of the flight or,
2 if more than 1 pilot is required for the operation of
3 the aircraft or by the regulations under which the
4 flight is being conducted, the individual designated
5 as second in command.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) CHAPTER ANALYSIS.—The analysis for such
8 chapter is amended by inserting after the item relat-
9 ing to section 44920 the following:

“44921. Federal flight deck officer program.”.

10 (2) FLIGHT DECK SECURITY.—Section 128 of
11 the Aviation and Transportation Security Act (Pub-
12 lic Law 107–71) is repealed.

13 (c) FEDERAL AIR MARSHAL PROGRAM.—

14 (1) SENSE OF CONGRESS.—It is the sense of
15 Congress that the Federal air marshal program is
16 critical to aviation security.

17 (2) LIMITATION ON STATUTORY CONSTRUC-
18 TION.—Nothing in this Act, including any amend-
19 ment made by this Act, shall be construed as pre-
20 venting the Under Secretary of Transportation for
21 Security from implementing and training Federal air
22 marshals.

23 **SEC. 1403. CREW TRAINING.**

24 (a) IN GENERAL.—Section 44918(e) of title 49,
25 United States Code, is amended—

1 (1) by striking “The Administrator” and insert-
2 ing the following:

3 “(1) IN GENERAL.—The Under Secretary”;

4 (2) by adding at the end the following:

5 “(2) ADDITIONAL REQUIREMENTS.—In updat-
6 ing the training guidance, the Under Secretary, in
7 consultation with the Administrator, shall issue a
8 rule to—

9 “(A) require both classroom and effective
10 hands-on situational training in the following
11 elements of self defense:

12 “(i) recognizing suspicious activities
13 and determining the seriousness of an oc-
14 currence;

15 “(ii) deterring a passenger who might
16 present a problem;

17 “(iii) crew communication and coordi-
18 nation;

19 “(iv) the proper commands to give to
20 passengers and attackers;

21 “(v) methods to subdue and restrain
22 an attacker;

23 “(vi) use of available items aboard the
24 aircraft for self-defense;

1 “(vii) appropriate and effective re-
2 sponses to defend oneself, including the
3 use of force against an attacker;

4 “(viii) use of protective devices as-
5 signed to crew members (to the extent
6 such devices are approved by the Adminis-
7 trator or Under Secretary);

8 “(ix) the psychology of terrorists to
9 cope with their behavior and passenger re-
10 sponses to that behavior;

11 “(x) how to respond to aircraft ma-
12 neuvers that may be authorized to defend
13 against an act of criminal violence or air
14 piracy;

15 “(B) require training in the proper con-
16 duct of a cabin search, including the duty time
17 required to conduct the search;

18 “(C) establish the required number of
19 hours of training and the qualifications for the
20 training instructors;

21 “(D) establish the intervals, number of
22 hours, and elements of recurrent training;

23 “(E) ensure that air carriers provide the
24 initial training required by this paragraph with-

1 in 24 months of the date of enactment of this
2 subparagraph; and

3 “(F) ensure that no person is required to
4 participate in any hands-on training activity
5 that that person believes will have an adverse
6 impact on his or her health or safety.

7 “(3) RESPONSIBILITY OF UNDER SEC-
8 RETARY.—(A) CONSULTATION.—In developing the
9 rule under paragraph (2), the Under Secretary shall
10 consult with law enforcement personnel and security
11 experts who have expertise in self-defense training,
12 terrorism experts, and representatives of air carriers,
13 the provider of self-defense training for Federal air
14 marshals, flight attendants, labor organizations rep-
15 resenting flight attendants, and educational institu-
16 tions offering law enforcement training programs.

17 “(B) DESIGNATION OF OFFICIAL.—The
18 Under Secretary shall designate an official in
19 the Transportation Security Administration to
20 be responsible for overseeing the implementa-
21 tion of the training program under this sub-
22 section.

23 “(C) NECESSARY RESOURCES AND KNOWL-
24 EDGE.—The Under Secretary shall ensure that
25 employees of the Administration responsible for

1 monitoring the training program have the nec-
2 essary resources and knowledge.”; and

3 (3) by aligning the remainder of the text of
4 paragraph (1) (as designated by paragraph (1) of
5 this section) with paragraphs (2) and (3) (as added
6 by paragraph (2) of this section).

7 (b) ENHANCE SECURITY MEASURES.—Section
8 109(a) of the Aviation and Transportation Security Act
9 (49 U.S.C. 114 note; 115 Stat. 613–614) is amended by
10 adding at the end the following:

11 “(9) Require that air carriers provide flight at-
12 tendants with a discreet, hands-free, wireless method
13 of communicating with the pilots.”.

14 (c) BENEFITS AND RISKS OF PROVIDING FLIGHT AT-
15 TENDANTS WITH NONLETHAL WEAPONS.—

16 (1) STUDY.—The Under Secretary of Transpor-
17 tation for Security shall conduct a study to evaluate
18 the benefits and risks of providing flight attendants
19 with nonlethal weapons to aide in combating air pi-
20 racy and criminal violence on commercial airlines.

21 (2) REPORT.—Not later than 6 months after
22 the date of enactment of this Act, the Under Sec-
23 retary shall transmit to Congress a report on the re-
24 sults of the study.

1 **SEC. 1404. COMMERCIAL AIRLINE SECURITY STUDY.**

2 (a) STUDY.—The Secretary of Transportation shall
3 conduct a study of the following:

4 (1) The number of armed Federal law enforce-
5 ment officers (other than Federal air marshals), who
6 travel on commercial airliners annually and the fre-
7 quency of their travel.

8 (2) The cost and resources necessary to provide
9 such officers with supplemental training in aircraft
10 anti-terrorism training that is comparable to the
11 training that Federal air marshals are provided.

12 (3) The cost of establishing a program at a
13 Federal law enforcement training center for the pur-
14 pose of providing new Federal law enforcement re-
15 cruits with standardized training comparable to the
16 training that Federal air marshals are provided.

17 (4) The feasibility of implementing a certifi-
18 cation program designed for the purpose of ensuring
19 Federal law enforcement officers have completed the
20 training described in paragraph (2) and track their
21 travel over a 6-month period.

22 (5) The feasibility of staggering the flights of
23 such officers to ensure the maximum amount of
24 flights have a certified trained Federal officer on
25 board.

1 (b) REPORT.—Not later than 6 months after the date
2 of enactment of this Act, the Secretary shall transmit to
3 Congress a report on the results of the study. The report
4 may be submitted in classified and redacted form.

5 **SEC. 1405. AUTHORITY TO ARM FLIGHT DECK CREW WITH**
6 **LESS-THAN-LETHAL WEAPONS.**

7 (a) IN GENERAL.—Section 44903(i) of title 49,
8 United States Code (as redesignated by section 6 of this
9 Act) is amended by adding at the end the following:

10 “(3) REQUEST OF AIR CARRIERS TO USE LESS-
11 THAN-LETHAL WEAPONS.—If, after the date of en-
12 actment of this paragraph, the Under Secretary re-
13 ceives a request from an air carrier for authorization
14 to allow pilots of the air carrier to carry less-than-
15 lethal weapons, the Under Secretary shall respond to
16 that request within 90 days.”.

17 (b) CONFORMING AMENDMENTS.—Such section is
18 further amended—

19 (1) in paragraph (1) by striking “Secretary”
20 the first and third places it appears and inserting
21 “Under Secretary”; and

22 (2) in paragraph (2) by striking “Secretary”
23 each place it appears and inserting “Under Sec-
24 retary”.

1 **SEC. 1406. TECHNICAL AMENDMENTS.**

2 Section 44903 of title 49, United States Code, is
3 amended—

4 (1) by redesignating subsection (i) (relating to
5 short-term assessment and deployment of emerging
6 security technologies and procedures) as subsection
7 (j);

8 (2) by redesignating the second subsection (h)
9 (relating to authority to arm flight deck crew with
10 less-than-lethal weapons) as subsection (i); and

11 (3) by redesignating the third subsection (h)
12 (relating to limitation on liability for acts to thwart
13 criminal violence for aircraft piracy) as subsection
14 (k).

15 **TITLE XV—TRANSITION**

16 **Subtitle A—Reorganization Plan**

17 **SEC. 1501. DEFINITIONS.**

18 For purposes of this title:

19 (1) The term “agency” includes any entity, or-
20 ganizational unit, program, or function.

21 (2) The term “transition period” means the 12-
22 month period beginning on the effective date of this
23 Act.

24 **SEC. 1502. REORGANIZATION PLAN.**

25 (a) SUBMISSION OF PLAN.—Not later than 60 days
26 after the date of the enactment of this Act, the President

1 shall transmit to the appropriate congressional committees
2 a reorganization plan regarding the following:

3 (1) The transfer of agencies, personnel, assets,
4 and obligations to the Department pursuant to this
5 Act.

6 (2) Any consolidation, reorganization, or
7 streamlining of agencies transferred to the Depart-
8 ment pursuant to this Act.

9 (b) PLAN ELEMENTS.—The plan transmitted under
10 subsection (a) shall contain, consistent with this Act, such
11 elements as the President deems appropriate, including
12 the following:

13 (1) Identification of any functions of agencies
14 transferred to the Department pursuant to this Act
15 that will not be transferred to the Department under
16 the plan.

17 (2) Specification of the steps to be taken by the
18 Secretary to organize the Department, including the
19 delegation or assignment of functions transferred to
20 the Department among officers of the Department
21 in order to permit the Department to carry out the
22 functions transferred under the plan.

23 (3) Specification of the funds available to each
24 agency that will be transferred to the Department as
25 a result of transfers under the plan.

1 (4) Specification of the proposed allocations
2 within the Department of unexpended funds trans-
3 ferred in connection with transfers under the plan.

4 (5) Specification of any proposed disposition of
5 property, facilities, contracts, records, and other as-
6 sets and obligations of agencies transferred under
7 the plan.

8 (6) Specification of the proposed allocations
9 within the Department of the functions of the agen-
10 cies and subdivisions that are not related directly to
11 securing the homeland.

12 (c) MODIFICATION OF PLAN.—The President may,
13 on the basis of consultations with the appropriate congres-
14 sional committees, modify or revise any part of the plan
15 until that part of the plan becomes effective in accordance
16 with subsection (d).

17 (d) EFFECTIVE DATE.—

18 (1) IN GENERAL.—The reorganization plan de-
19 scribed in this section, including any modifications
20 or revisions of the plan under subsection (d), shall
21 become effective for an agency on the earlier of—

22 (A) the date specified in the plan (or the
23 plan as modified pursuant to subsection (d)),
24 except that such date may not be earlier than
25 90 days after the date the President has trans-

1 mitted the reorganization plan to the appro-
2 priate congressional committees pursuant to
3 subsection (a); or

4 (B) the end of the transition period.

5 (2) STATUTORY CONSTRUCTION.—Nothing in
6 this subsection may be construed to require the
7 transfer of functions, personnel, records, balances of
8 appropriations, or other assets of an agency on a
9 single date.

10 (3) SUPERSEDES EXISTING LAW.—Paragraph
11 (1) shall apply notwithstanding section 905(b) of
12 title 5, United States Code.

13 **SEC. 1503. REVIEW OF CONGRESSIONAL COMMITTEE**
14 **STRUCTURES.**

15 It is the sense of Congress that each House of Con-
16 gress should review its committee structure in light of the
17 reorganization of responsibilities within the executive
18 branch by the establishment of the Department.

19 **Subtitle B—Transitional Provisions**

20 **SEC. 1511. TRANSITIONAL AUTHORITIES.**

21 (a) PROVISION OF ASSISTANCE BY OFFICIALS.—
22 Until the transfer of an agency to the Department, any
23 official having authority over or functions relating to the
24 agency immediately before the effective date of this Act
25 shall provide to the Secretary such assistance, including

1 the use of personnel and assets, as the Secretary may re-
2 quest in preparing for the transfer and integration of the
3 agency into the Department.

4 (b) SERVICES AND PERSONNEL.—During the transi-
5 tion period, upon the request of the Secretary, the head
6 of any executive agency may, on a reimbursable basis, pro-
7 vide services or detail personnel to assist with the transi-
8 tion.

9 (c) ACTING OFFICIALS.—(1) During the transition
10 period, pending the advice and consent of the Senate to
11 the appointment of an officer required by this Act to be
12 appointed by and with such advice and consent, the Presi-
13 dent may designate any officer whose appointment was re-
14 quired to be made by and with such advice and consent
15 and who was such an officer immediately before the effec-
16 tive date of this Act (and who continues in office) or im-
17 mediately before such designation, to act in such office
18 until the same is filled as provided in this Act. While so
19 acting, such officers shall receive compensation at the
20 higher of—

21 (A) the rates provided by this Act for the re-
22 spective offices in which they act; or

23 (B) the rates provided for the offices held at
24 the time of designation.

1 (2) Nothing in this Act shall be understood to require
2 the advice and consent of the Senate to the appointment
3 by the President to a position in the Department of any
4 officer whose agency is transferred to the Department
5 pursuant to this Act and whose duties following such
6 transfer are germane to those performed before such
7 transfer.

8 (d) TRANSFER OF PERSONNEL, ASSETS, OBLIGA-
9 TIONS, AND FUNCTIONS.—Upon the transfer of an agency
10 to the Department—

11 (1) the personnel, assets, and obligations held
12 by or available in connection with the agency shall
13 be transferred to the Secretary for appropriate allo-
14 cation, subject to the approval of the Director of the
15 Office of Management and Budget and in accord-
16 ance with the provisions of section 1531(a)(2) of
17 title 31, United States Code; and

18 (2) the Secretary shall have all functions relat-
19 ing to the agency that any other official could by law
20 exercise in relation to the agency immediately before
21 such transfer, and shall have in addition all func-
22 tions vested in the Secretary by this Act or other
23 law.

24 (e) PROHIBITION ON USE OF TRANSPORTATION
25 TRUST FUNDS.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of this Act, no funds derived from the
3 Highway Trust Fund, Airport and Airway Trust
4 Fund, Inland Waterway Trust Fund, or Harbor
5 Maintenance Trust Fund, may be transferred to,
6 made available to, or obligated by the Secretary or
7 any other official in the Department.

8 (2) LIMITATION.—This subsection shall not
9 apply to security-related funds provided to the Fed-
10 eral Aviation Administration for fiscal years pre-
11 ceding fiscal year 2003 for (A) operations, (B) facili-
12 ties and equipment, or (C) research, engineering,
13 and development.

14 **SEC. 1512. SAVINGS PROVISIONS.**

15 (a) COMPLETED ADMINISTRATIVE ACTIONS.—(1)
16 Completed administrative actions of an agency shall not
17 be affected by the enactment of this Act or the transfer
18 of such agency to the Department, but shall continue in
19 effect according to their terms until amended, modified,
20 superseded, terminated, set aside, or revoked in accord-
21 ance with law by an officer of the United States or a court
22 of competent jurisdiction, or by operation of law.

23 (2) For purposes of paragraph (1), the term “com-
24 pleted administrative action” includes orders, determina-
25 tions, rules, regulations, personnel actions, permits, agree-

1 ments, grants, contracts, certificates, licenses, registra-
2 tions, and privileges.

3 (b) PENDING PROCEEDINGS.—Subject to the author-
4 ity of the Secretary under this Act—

5 (1) pending proceedings in an agency, including
6 notices of proposed rulemaking, and applications for
7 licenses, permits, certificates, grants, and financial
8 assistance, shall continue notwithstanding the enact-
9 ment of this Act or the transfer of the agency to the
10 Department, unless discontinued or modified under
11 the same terms and conditions and to the same ex-
12 tent that such discontinuance could have occurred if
13 such enactment or transfer had not occurred; and

14 (2) orders issued in such proceedings, and ap-
15 peals therefrom, and payments made pursuant to
16 such orders, shall issue in the same manner and on
17 the same terms as if this Act had not been enacted
18 or the agency had not been transferred, and any
19 such orders shall continue in effect until amended,
20 modified, superseded, terminated, set aside, or re-
21 voked by an officer of the United States or a court
22 of competent jurisdiction, or by operation of law.

23 (c) PENDING CIVIL ACTIONS.—Subject to the author-
24 ity of the Secretary under this Act, pending civil actions
25 shall continue notwithstanding the enactment of this Act

1 or the transfer of an agency to the Department, and in
2 such civil actions, proceedings shall be had, appeals taken,
3 and judgments rendered and enforced in the same manner
4 and with the same effect as if such enactment or transfer
5 had not occurred.

6 (d) REFERENCES.—References relating to an agency
7 that is transferred to the Department in statutes, Execu-
8 tive orders, rules, regulations, directives, or delegations of
9 authority that precede such transfer or the effective date
10 of this Act shall be deemed to refer, as appropriate, to
11 the Department, to its officers, employees, or agents, or
12 to its corresponding organizational units or functions.
13 Statutory reporting requirements that applied in relation
14 to such an agency immediately before the effective date
15 of this Act shall continue to apply following such transfer
16 if they refer to the agency by name.

17 (e) EMPLOYMENT PROVISIONS.—(1) Notwith-
18 standing the generality of the foregoing (including sub-
19 sections (a) and (d)), in and for the Department the Sec-
20 retary may, in regulations prescribed jointly with the Di-
21 rector of the Office of Personnel Management, adopt the
22 rules, procedures, terms, and conditions, established by
23 statute, rule, or regulation before the effective date of this
24 Act, relating to employment in any agency transferred to
25 the Department pursuant to this Act; and

1 (2) except as otherwise provided in this Act, or under
2 authority granted by this Act, the transfer pursuant to
3 this Act of personnel shall not alter the terms and condi-
4 tions of employment, including compensation, of any em-
5 ployee so transferred.

6 (f) **STATUTORY REPORTING REQUIREMENTS.**—Any
7 statutory reporting requirement that applied to an agency,
8 transferred to the Department under this Act, imme-
9 diately before the effective date of this Act shall continue
10 to apply following that transfer if the statutory require-
11 ment refers to the agency by name.

12 **SEC. 1513. TERMINATIONS.**

13 Except as otherwise provided in this Act, whenever
14 all the functions vested by law in any agency have been
15 transferred pursuant to this Act, each position and office
16 the incumbent of which was authorized to receive com-
17 pensation at the rates prescribed for an office or position
18 at level II, III, IV, or V, of the Executive Schedule, shall
19 terminate.

20 **SEC. 1514. NATIONAL IDENTIFICATION SYSTEM NOT AU-**
21 **THORIZED.**

22 Nothing in this Act shall be construed to authorize
23 the development of a national identification system or
24 card.

1 **SEC. 1515. CONTINUITY OF INSPECTOR GENERAL OVER-**
2 **SIGHT.**

3 Notwithstanding the transfer of an agency to the De-
4 partment pursuant to this Act, the Inspector General that
5 exercised oversight of such agency prior to such transfer
6 shall continue to exercise oversight of such agency during
7 the period of time, if any, between the transfer of such
8 agency to the Department pursuant to this Act and the
9 appointment of the Inspector General of the Department
10 of Homeland Security in accordance with section 103(b).

11 **SEC. 1516. INCIDENTAL TRANSFERS.**

12 The Director of the Office of Management and Budg-
13 et, in consultation with the Secretary, is authorized and
14 directed to make such additional incidental dispositions of
15 personnel, assets, and liabilities held, used, arising from,
16 available, or to be made available, in connection with the
17 functions transferred by this Act, as the Director may de-
18 termine necessary to accomplish the purposes of this Act.

19 **SEC. 1517. REFERENCE.**

20 With respect to any function transferred by or under
21 this Act (including under a reorganization plan that be-
22 comes effective under section 1502) and exercised on or
23 after the effective date of this Act, reference in any other
24 Federal law to any department, commission, or agency or
25 any officer or office the functions of which are so trans-
26 ferred shall be deemed to refer to the Secretary, other offi-

1 cial, or component of the Department to which such func-
2 tion is so transferred.

3 **TITLE XVI—CORRECTIONS TO**
4 **EXISTING LAW RELATING TO**
5 **AIRLINE TRANSPORTATION**
6 **SECURITY**

7 **SEC. 1601. RETENTION OF SECURITY SENSITIVE INFORMA-**
8 **TION AUTHORITY AT DEPARTMENT OF**
9 **TRANSPORTATION.**

10 (a) Section 40119 of title 49, United States Code,
11 is amended—

12 (1) in subsection (a)—

13 (A) by inserting “and the Administrator of
14 the Federal Aviation Administration each” after
15 “for Security”; and

16 (B) by striking “criminal violence and air-
17 craft piracy” and inserting “criminal violence,
18 aircraft piracy, and terrorism and to ensure se-
19 curity”; and

20 (2) in subsection (b)(1)—

21 (A) by striking “, the Under Secretary”
22 and inserting “and the establishment of a De-
23 partment of Homeland Security, the Secretary
24 of Transportation”;

1 (B) by striking “carrying out” and all that
2 follows through “if the Under Secretary” and
3 inserting “ensuring security under this title if
4 the Secretary of Transportation”; and

5 (C) in subparagraph (C) by striking “the
6 safety of passengers in transportation” and in-
7 serting “transportation safety”.

8 (b) Section 114 of title 49, United States Code, is
9 amended by adding at the end the following:

10 “(s) NONDISCLOSURE OF SECURITY ACTIVITIES.—

11 “(1) IN GENERAL.—Notwithstanding section
12 552 of title 5, the Under Secretary shall prescribe
13 regulations prohibiting the disclosure of information
14 obtained or developed in carrying out security under
15 authority of the Aviation and Transportation Secu-
16 rity Act (Public Law 107–71) or under chapter 449
17 of this title if the Under Secretary decides that dis-
18 closing the information would—

19 “(A) be an unwarranted invasion of per-
20 sonal privacy;

21 “(B) reveal a trade secret or privileged or
22 confidential commercial or financial informa-
23 tion; or

24 “(C) be detrimental to the security of
25 transportation.

1 “(2) AVAILABILITY OF INFORMATION TO CON-
2 GRESS.—Paragraph (1) does not authorize informa-
3 tion to be withheld from a committee of Congress
4 authorized to have the information.

5 “(3) LIMITATION ON TRANSFERABILITY OF DU-
6 TIES.—Except as otherwise provided by law, the
7 Under Secretary may not transfer a duty or power
8 under this subsection to another department, agen-
9 cy, or instrumentality of the United States.”.

10 **SEC. 1602. INCREASE IN CIVIL PENALTIES.**

11 Section 46301(a) of title 49, United States Code, is
12 amended by adding at the end the following:

13 “(8) AVIATION SECURITY VIOLATIONS.—Not-
14 withstanding paragraphs (1) and (2) of this sub-
15 section, the maximum civil penalty for violating
16 chapter 449 or another requirement under this title
17 administered by the Under Secretary of Transpor-
18 tation for Security shall be \$10,000; except that the
19 maximum civil penalty shall be \$25,000 in the case
20 of a person operating an aircraft for the transpor-
21 tation of passengers or property for compensation
22 (except an individual serving as an airman).”.

1 **SEC. 1603. ALLOWING UNITED STATES CITIZENS AND**
2 **UNITED STATES NATIONALS AS SCREENERS.**

3 Section 44935(e)(2)(A)(ii) of title 49, United States
4 Code, is amended by striking “citizen of the United
5 States” and inserting “citizen of the United States or a
6 national of the United States, as defined in section
7 1101(a)(22) of the Immigration and Nationality Act (8
8 U.S.C. 1101(a)(22))”.

9 **TITLE XVII—CONFORMING AND**
10 **TECHNICAL AMENDMENTS**

11 **SEC. 1701. INSPECTOR GENERAL ACT OF 1978.**

12 Section 11 of the Inspector General Act of 1978
13 (Public Law 95–452) is amended—

14 (1) by inserting “Homeland Security,” after
15 “Transportation,” each place it appears; and

16 (2) by striking “; and” each place it appears in
17 paragraph (1) and inserting “;”;

18 **SEC. 1702. EXECUTIVE SCHEDULE.**

19 (a) IN GENERAL.—Title 5, United States Code, is
20 amended—

21 (1) in section 5312, by inserting “Secretary of
22 Homeland Security.” as a new item after “Affairs.”;

23 (2) in section 5313, by inserting “Deputy Sec-
24 retary of Homeland Security.” as a new item after
25 “Affairs.”;

1 (3) in section 5314, by inserting “Under Secre-
2 taries, Department of Homeland Security.”, “Direc-
3 tor of the Bureau of Citizenship and Immigration
4 Services.” as new items after “Affairs.” the third
5 place it appears;

6 (4) in section 5315, by inserting “Assistant
7 Secretaries, Department of Homeland Security.”,
8 “General Counsel, Department of Homeland Secu-
9 rity.”, “Officer for Civil Rights and Civil Liberties,
10 Department of Homeland Security.”, “Chief Finan-
11 cial Officer, Department of Homeland Security.”,
12 “Chief Information Officer, Department of Home-
13 land Security.”, and “Inspector General, Depart-
14 ment of Homeland Security.” as new items after
15 “Affairs.” the first place it appears; and

16 (5) in section 5315, by striking “Commissioner
17 of Immigration and Naturalization, Department of
18 Justice.”.

19 (b) SPECIAL EFFECTIVE DATE.—Notwithstanding
20 section 4, the amendment made by subsection (a)(5) shall
21 take effect on the date on which the transfer of functions
22 specified under section 441 takes effect.

23 **SEC. 1703. UNITED STATES SECRET SERVICE.**

24 (a) IN GENERAL.—(1) The United States Code is
25 amended in section 202 of title 3, and in section 3056

1 of title 18, by striking “of the Treasury”, each place it
2 appears and inserting “of Homeland Security”.

3 (2) Section 208 of title 3, United States Code, is
4 amended by striking “of Treasury” each place it appears
5 and inserting “of Homeland Security”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect on the date of transfer of
8 the United States Secret Service to the Department.

9 **SEC. 1704. COAST GUARD.**

10 (a) TITLE 14, U.S.C.—Title 14, United States Code,
11 is amended in sections 1, 3, 53, 95, 145, 516, 666, 669,
12 673, 673a (as redesignated by subsection (e)(1)), 674,
13 687, and 688 by striking “of Transportation” each place
14 it appears and inserting “of Homeland Security”.

15 (b) TITLE 10, U.S.C.—(1) Title 10, United States
16 Code, is amended in sections 101(9), 130b(a), 130b(c)(4),
17 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e),
18 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e),
19 888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a),
20 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c),
21 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2),
22 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e),
23 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175,
24 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b),
25 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a),

1 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1),
2 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e),
3 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836,
4 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a),
5 10147(a), 10149(b), 10150, 10202(b), 10203(d),
6 10205(b), 10301(b), 12103(b), 12103(d), 12304,
7 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e),
8 16131(a), 16136(a), 16301(g), and 18501 by striking “of
9 Transportation” each place it appears and inserting “of
10 Homeland Security”.

11 (2) Section 801(1) of such title is amended by strik-
12 ing “the General Counsel of the Department of Transpor-
13 tation” and inserting “an official designated to serve as
14 Judge Advocate General of the Coast Guard by the Sec-
15 retary of Homeland Security”.

16 (3) Section 983(d)(2)(B) of such title is amended by
17 striking “Department of Transportation” and inserting
18 “Department of Homeland Security”.

19 (4) Section 2665(b) of such title is amended by strik-
20 ing “Department of Transportation” and inserting “De-
21 partment in which the Coast Guard is operating”.

22 (5) Section 7045 of such title is amended—

23 (A) in subsections (a)(1) and (b), by striking
24 “Secretaries of the Army, Air Force, and Transpor-
25 tation” both places it appears and inserting “Sec-

1 retary of the Army, the Secretary of the Air Force,
2 and the Secretary of Homeland Security”; and

3 (B) in subsection (b), by striking “Department
4 of Transportation” and inserting “Department of
5 Homeland Security”.

6 (6) Section 7361(b) of such title is amended in the
7 subsection heading by striking “TRANSPORTATION” and
8 inserting “HOMELAND SECURITY”.

9 (7) Section 12522(c) of such title is amended in the
10 subsection heading by striking “TRANSPORTATION” and
11 inserting “HOMELAND SECURITY”.

12 (c) TITLE 37, U.S.C.—Title 37, United States Code,
13 is amended in sections 101(5), 204(i)(4), 301a(a)(3),
14 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e),
15 308e(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e),
16 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d),
17 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1),
18 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a),
19 and 1011(d) by striking “of Transportation” each place
20 it appears and inserting “of Homeland Security”.

21 (d) TITLE 38, U.S.C.—Title 38, United States Code,
22 is amended in sections 101(25)(d), 1560(a), 3002(5),
23 3011(a)(1)(A)(ii)(I), 3011(a)(1)(A)(ii)(II),
24 3011(a)(1)(B)(ii)(III), 3011(a)(1)(C)(iii)(II)(cc),
25 3012(b)(1)(A)(v), 3012(b)(1)(B)(ii)(V),

1 3018(b)(3)(B)(iv), 3018A(a)(3), 3018B(a)(1)(C),
2 3018B(a)(2)(C), 3018C(a)(5), 3020(m), 3035(b)(2),
3 3035(e), 3035(d), 3035(e), 3680A(g), and 6105(e) by
4 striking “of Transportation” each place it appears and in-
5 serting “of Homeland Security”.

6 (e) OTHER DEFENSE-RELATED LAWS.—(1) Section
7 363 of Public Law 104–193 (110 Stat. 2247) is
8 amended—

9 (A) in subsection (a)(1) (10 U.S.C. 113 note),
10 by striking “of Transportation” and inserting “of
11 Homeland Security”; and

12 (B) in subsection (b)(1) (10 U.S.C. 704 note),
13 by striking “of Transportation” and inserting “of
14 Homeland Security”.

15 (2) Section 721(1) of Public Law 104–201 (10
16 U.S.C. 1073 note) is amended by striking “of Transpor-
17 tation” and inserting “of Homeland Security”.

18 (3) Section 4463(a) of Public Law 102–484 (10
19 U.S.C. 1143a note) is amended by striking “after con-
20 sultation with the Secretary of Transportation”.

21 (4) Section 4466(h) of Public Law 102–484 (10
22 U.S.C. 1143 note) is amended by striking “of Transpor-
23 tation” and inserting “of Homeland Security”.

1 (5) Section 542(d) of Public Law 103–337 (10
2 U.S.C. 1293 note) is amended by striking “of Transpor-
3 tation” and inserting “of Homeland Security”.

4 (6) Section 740 of Public Law 106–181 (10 U.S.C.
5 2576 note) is amended in subsections (b)(2), (c), and
6 (d)(1) by striking “of Transportation” each place it ap-
7 pears and inserting “of Homeland Security”.

8 (7) Section 1407(b)(2) of the Defense Dependents’
9 Education Act of 1978 (20 U.S.C. 926(b)) is amended by
10 striking “of Transportation” both places it appears and
11 inserting “of Homeland Security”.

12 (8) Section 2301(5)(D) of the Elementary and Sec-
13 ondary Education Act of 1965 (20 U.S.C. 6671(5)(D))
14 is amended by striking “of Transportation” and inserting
15 “of Homeland Security”.

16 (9) Section 2307(a) of the Elementary and Secondary
17 Education Act of 1965 (20 U.S.C. 6677(a)) is amended
18 by striking “of Transportation” and inserting “of Home-
19 land Security”.

20 (10) Section 1034(a) of Public Law 105–85 (21
21 U.S.C. 1505a(a)) is amended by striking “of Transpor-
22 tation” and inserting “of Homeland Security”.

23 (11) The Military Selective Service Act is amended—

1 (A) in section 4(a) (50 U.S.C. App. 454(a)), by
2 striking “of Transportation” in the fourth para-
3 graph and inserting “of Homeland Security”;

4 (B) in section 4(b) (50 U.S.C. App. 454(b)), by
5 striking “of Transportation” both places it appears
6 and inserting “of Homeland Security”;

7 (C) in section 6(d)(1) (50 U.S.C. App.
8 456(d)(1)), by striking “of Transportation” both
9 places it appears and inserting “of Homeland Secu-
10 rity”;

11 (D) in section 9(c) (50 U.S.C. App. 459(c)), by
12 striking “Secretaries of Army, Navy, Air Force, or
13 Transportation” and inserting “Secretary of a mili-
14 tary department, and the Secretary of Homeland Se-
15 curity with respect to the Coast Guard,”; and

16 (E) in section 15(e) (50 U.S.C. App. 465(e)),
17 by striking “of Transportation” both places it ap-
18 pears and inserting “of Homeland Security”.

19 (f) TECHNICAL CORRECTION.—(1) Title 14, United
20 States Code, is amended by redesignating section 673 (as
21 added by section 309 of Public Law 104–324) as section
22 673a.

23 (2) The table of sections at the beginning of chapter
24 17 of such title is amended by redesignating the item re-
25 lating to such section as section 673a.

1 (g) EFFECTIVE DATE.—The amendments made by
2 this section (other than subsection (f)) shall take effect
3 on the date of transfer of the Coast Guard to the Depart-
4 ment.

5 **SEC. 1705. STRATEGIC NATIONAL STOCKPILE AND SMALL-**
6 **POX VACCINE DEVELOPMENT.**

7 (a) IN GENERAL.—Section 121 of the Public Health
8 Security and Bioterrorism Preparedness and Response
9 Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12)
10 is amended—

11 (1) in subsection (a)(1)—

12 (A) by striking “Secretary of Health and
13 Human Services” and inserting “Secretary of
14 Homeland Security”;

15 (B) by inserting “the Secretary of Health
16 and Human Services and” between “in coordi-
17 nation with” and “the Secretary of Veterans
18 Affairs”; and

19 (C) by inserting “of Health and Human
20 Services” after “as are determined by the Sec-
21 retary”; and

22 (2) in subsections (a)(2) and (b), by inserting
23 “of Health and Human Services” after “Secretary”
24 each place it appears.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of transfer of
3 the Strategic National Stockpile of the Department of
4 Health and Human Services to the Department.

5 **SEC. 1706. TRANSFER OF CERTAIN SECURITY AND LAW EN-**
6 **FORCEMENT FUNCTIONS AND AUTHORITIES.**

7 (a) AMENDMENT TO TITLE 40.—Section 581 of title
8 40, United States Code, is amended—

9 (1) by striking subsection (a); and

10 (2) in subsection (b)—

11 (A) by inserting “and” after the semicolon
12 at the end of paragraph (1);

13 (B) by striking “; and” at the end of para-
14 graph (2) and inserting a period; and

15 (C) by striking paragraph (3).

16 (b) LAW ENFORCEMENT AUTHORITY.—

17 (1) IN GENERAL.—Section 1315 of title 40,
18 United States Code, is amended to read as follows:

19 **“§ 1315. Law enforcement authority of Secretary of**
20 **Homeland Security for protection of pub-**
21 **lic property**

22 “(a) IN GENERAL.—To the extent provided for by
23 transfers made pursuant to the Homeland Security Act
24 of 2002, the Secretary of Homeland Security (in this sec-
25 tion referred to as the ‘Secretary’) shall protect the build-

1 ings, grounds, and property that are owned, occupied, or
2 secured by the Federal Government (including any agency,
3 instrumentality, or wholly owned or mixed-ownership cor-
4 poration thereof) and the persons on the property.

5 “(b) OFFICERS AND AGENTS.—

6 “(1) DESIGNATION.—The Secretary may des-
7 ignate employees of the Department of Homeland
8 Security, including employees transferred to the De-
9 partment from the Office of the Federal Protective
10 Service of the General Services Administration pur-
11 suant to the Homeland Security Act of 2002, as offi-
12 cers and agents for duty in connection with the pro-
13 tection of property owned or occupied by the Federal
14 Government and persons on the property, including
15 duty in areas outside the property to the extent nec-
16 essary to protect the property and persons on the
17 property.

18 “(2) POWERS.—While engaged in the perform-
19 ance of official duties, an officer or agent designated
20 under this subsection may—

21 “(A) enforce Federal laws and regulations
22 for the protection of persons and property;

23 “(B) carry firearms;

24 “(C) make arrests without a warrant for
25 any offense against the United States com-

1 mitted in the presence of the officer or agent or
2 for any felony cognizable under the laws of the
3 United States if the officer or agent has reason-
4 able grounds to believe that the person to be ar-
5 rested has committed or is committing a felony;

6 “(D) serve warrants and subpoenas issued
7 under the authority of the United States; and

8 “(E) conduct investigations, on and off the
9 property in question, of offenses that may have
10 been committed against property owned or oc-
11 cupied by the Federal Government or persons
12 on the property.

13 “(F) carry out such other activities for the
14 promotion of homeland security as the Sec-
15 retary may prescribe.

16 “(c) REGULATIONS.—

17 “(1) IN GENERAL.—The Secretary, in consulta-
18 tion with the Administrator of General Services, may
19 prescribe regulations necessary for the protection
20 and administration of property owned or occupied by
21 the Federal Government and persons on the prop-
22 erty. The regulations may include reasonable pen-
23 alties, within the limits prescribed in paragraph (2),
24 for violations of the regulations. The regulations

1 shall be posted and remain posted in a conspicuous
2 place on the property.

3 “(2) PENALTIES.—A person violating a regula-
4 tion prescribed under this subsection shall be fined
5 under title 18, United States Code, imprisoned for
6 not more than 30 days, or both.

7 “(d) DETAILS.—

8 “(1) REQUESTS OF AGENCIES.—On the request
9 of the head of a Federal agency having charge or
10 control of property owned or occupied by the Federal
11 Government, the Secretary may detail officers and
12 agents designated under this section for the protec-
13 tion of the property and persons on the property.

14 “(2) APPLICABILITY OF REGULATIONS.—The
15 Secretary may—

16 “(A) extend to property referred to in
17 paragraph (1) the applicability of regulations
18 prescribed under this section and enforce the
19 regulations as provided in this section; or

20 “(B) utilize the authority and regulations
21 of the requesting agency if agreed to in writing
22 by the agencies.

23 “(3) FACILITIES AND SERVICES OF OTHER
24 AGENCIES.—When the Secretary determines it to be
25 economical and in the public interest, the Secretary

1 may utilize the facilities and services of Federal,
2 State, and local law enforcement agencies, with the
3 consent of the agencies.

4 “(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—
5 For the protection of property owned or occupied by the
6 Federal Government and persons on the property, the Sec-
7 retary may enter into agreements with Federal agencies
8 and with State and local governments to obtain authority
9 for officers and agents designated under this section to
10 enforce Federal laws and State and local laws concurrently
11 with other Federal law enforcement officers and with
12 State and local law enforcement officers.

13 “(f) SECRETARY AND ATTORNEY GENERAL AP-
14 PROVAL.—The powers granted to officers and agents des-
15 ignated under this section shall be exercised in accordance
16 with guidelines approved by the Secretary and the Attor-
17 ney General.

18 “(g) LIMITATION ON STATUTORY CONSTRUCTION.—
19 Nothing in this section shall be construed to—

20 “(1) preclude or limit the authority of any Fed-
21 eral law enforcement agency; or

22 “(2) restrict the authority of the Administrator
23 of General Services to promulgate regulations affect-
24 ing property under the Administrator’s custody and
25 control.”.

1 **SEC. 1709. COLLABORATION WITH THE SECRETARY OF**
2 **HOMELAND SECURITY.**

3 (a) DEPARTMENT OF HEALTH AND HUMAN SERV-
4 ICES.—The second sentence of section 351A(e)(1) of the
5 Public Health Service Act (42 U.S.C. 262A(e)(1)) is
6 amended by striking “consultation with” and inserting
7 “collaboration with the Secretary of Homeland Security
8 and”.

9 (b) DEPARTMENT OF AGRICULTURE.—The second
10 sentence of section 212(e)(1) of the Agricultural Bioter-
11 rorism Protection Act of 2002 (7 U.S.C. 8401) is amended
12 by striking “consultation with” and inserting “collabora-
13 tion with the Secretary of Homeland Security and”.

14 **SEC. 1710. RAILROAD SAFETY TO INCLUDE RAILROAD SE-**
15 **CURITY.**

16 (a) INVESTIGATION AND SURVEILLANCE ACTIVI-
17 TIES.—Section 20105 of title 49, United States Code, is
18 amended—

19 (1) by striking “Secretary of Transportation”
20 in the first sentence of subsection (a) and inserting
21 “Secretary concerned”;

22 (2) by striking “Secretary” each place it ap-
23 pears (except the first sentence of subsection (a))
24 and inserting “Secretary concerned”;

25 (3) by striking “Secretary’s duties under chap-
26 ters 203–213 of this title” in subsection (d) and in-

1 serting “duties under chapters 203–213 of this title
2 (in the case of the Secretary of Transportation) and
3 duties under section 114 of this title (in the case of
4 the Secretary of Homeland Security)”;

5 (4) by striking “chapter.” in subsection (f) and
6 inserting “chapter (in the case of the Secretary of
7 Transportation) and duties under section 114 of this
8 title (in the case of the Secretary of Homeland Secu-
9 rity).”; and

10 (5) by adding at the end the following new sub-
11 section:

12 “(g) DEFINITIONS.—In this section—

13 “(1) the term ‘safety’ includes security; and

14 “(2) the term ‘Secretary concerned’ means—

15 “(A) the Secretary of Transportation, with
16 respect to railroad safety matters concerning
17 such Secretary under laws administered by that
18 Secretary; and

19 “(B) the Secretary of Homeland Security,
20 with respect to railroad safety matters con-
21 cerning such Secretary under laws administered
22 by that Secretary.”.

23 (b) REGULATIONS AND ORDERS.—Section 20103(a)
24 of such title is amended by inserting after “1970.” the
25 following: “When prescribing a security regulation or

1 issuing a security order that affects the safety of railroad
2 operations, the Secretary of Homeland Security shall con-
3 sult with the Secretary.”.

4 (c) NATIONAL UNIFORMITY OF REGULATION.—Sec-
5 tion 20106 of such title is amended—

6 (1) by inserting “and laws, regulations, and or-
7 ders related to railroad security” after “safety” in
8 the first sentence;

9 (2) by inserting “or security” after “safety”
10 each place it appears after the first sentence; and

11 (3) by striking “Transportation” in the second
12 sentence and inserting “Transportation (with respect
13 to railroad safety matters), or the Secretary of
14 Homeland Security (with respect to railroad security
15 matters),”.

16 **SEC. 1711. HAZMAT SAFETY TO INCLUDE HAZMAT SECU-**
17 **RITY.**

18 (a) GENERAL REGULATORY AUTHORITY.—Section
19 5103 of title 49, United States Code, is amended—

20 (1) by striking “transportation” the first place
21 it appears in subsection (b)(1) and inserting “trans-
22 portation, including security,”;

23 (2) by striking “aspects” in subsection
24 (b)(1)(B) and inserting “aspects, including secu-
25 rity,”; and

1 (3) by adding at the end the following:

2 “(C) CONSULTATION.—When prescribing a
3 security regulation or issuing a security order
4 that affects the safety of the transportation of
5 hazardous material, the Secretary of Homeland
6 Security shall consult with the Secretary.”.

7 (b) PREEMPTION.—Section 5125 of that title is
8 amended—

9 (1) by striking “chapter or a regulation pre-
10 scribed under this chapter” in subsection (a)(1) and
11 inserting “chapter, a regulation prescribed under
12 this chapter, or a hazardous materials transpor-
13 tation security regulation or directive issued by the
14 Secretary of Homeland Security”;

15 (2) by striking “chapter or a regulation pre-
16 scribed under this chapter.” in subsection (a)(2) and
17 inserting “chapter, a regulation prescribed under
18 this chapter, or a hazardous materials transpor-
19 tation security regulation or directive issued by the
20 Secretary of Homeland Security.”; and

21 (3) by striking “chapter or a regulation pre-
22 scribed under this chapter,” in subsection (b)(1) and
23 inserting “chapter, a regulation prescribed under
24 this chapter, or a hazardous materials transpor-

1 tation security regulation or directive issued by the
2 Secretary of Homeland Security,”.

3 **SEC. 1712. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.**

4 The National Science and Technology Policy, Organi-
5 zation, and Priorities Act of 1976 is amended—

6 (1) in section 204(b)(1) (42 U.S.C.
7 6613(b)(1)), by inserting “homeland security,” after
8 “national security,”; and

9 (2) in section 208(a)(1) (42 U.S.C.
10 6617(a)(1)), by inserting “the Office of Homeland
11 Security,” after “National Security Council,”.

12 **SEC. 1713. NATIONAL OCEANOGRAPHIC PARTNERSHIP**
13 **PROGRAM.**

14 Section 7902(b) of title 10, United States Code, is
15 amended by adding at the end the following new para-
16 graphs:

17 “(13) The Under Secretary for Science and
18 Technology of the Department of Homeland Secu-
19 rity.

20 “(14) Other Federal officials the Council con-
21 siders appropriate.”.

22 **SEC. 1714. CLARIFICATION OF DEFINITION OF MANUFAC-**
23 **TURER.**

24 Section 2133(3) of the Public Health Service Act (42
25 U.S.C. 300aa-33(3)) is amended—

1 (1) in the first sentence, by striking “under its
2 label any vaccine set forth in the Vaccine Injury
3 Table” and inserting “any vaccine set forth in the
4 Vaccine Injury table, including any component or in-
5 gredient of any such vaccine”; and

6 (2) in the second sentence, by inserting “includ-
7 ing any component or ingredient of any such vac-
8 cine” before the period.

9 **SEC. 1715. CLARIFICATION OF DEFINITION OF VACCINE-RE-**
10 **LATED INJURY OR DEATH.**

11 Section 2133(5) of the Public Health Service Act (42
12 U.S.C. 300aa–33(5)) is amended by adding at the end the
13 following: “For purposes of the preceding sentence, an
14 adulterant or contaminant shall not include any compo-
15 nent or ingredient listed in a vaccine’s product license ap-
16 plication or product label.”.

17 **SEC. 1716. CLARIFICATION OF DEFINITION OF VACCINE.**

18 Section 2133 of the Public Health Service Act (42
19 U.S.C. 300aa–33) is amended by adding at the end the
20 following:

21 “(7) The term ‘vaccine’ means any preparation
22 or suspension, including but not limited to a prepa-
23 ration or suspension containing an attenuated or in-
24 active microorganism or subunit thereof or toxin, de-
25 veloped or administered to produce or enhance the

1 body's immune response to a disease or diseases and
2 includes all components and ingredients listed in the
3 vaccines's product license application and product
4 label.".

5 **SEC. 1717. EFFECTIVE DATE.**

6 The amendments made by sections 1714, 1715, and
7 1716 shall apply to all actions or proceedings pending on
8 or after the date of enactment of this Act, unless a court
9 of competent jurisdiction has entered judgment (regard-
10 less of whether the time for appeal has expired) in such
11 action or proceeding disposing of the entire action or pro-
12 ceeding.

Passed the House of Representatives November 13,
2002.

Attest:

Clerk.

107TH CONGRESS
2D SESSION

H. R. 5710

AN ACT

To establish the Department of Homeland Security,
and for other purposes.